

***United States Court of Appeals
for the Second Circuit***



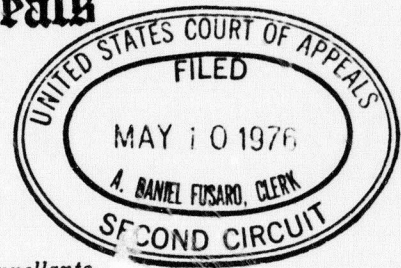
APPENDIX

ORIGINAL

76-7040

United States Court of Appeals

For the Second Circuit.



MOHAMED ALI and NADIA ALI,
Plaintiffs-Appellants,

against

A & G COMPANY, INC., and SAADI IBRAHIM,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

HARRY H. LIPSIG, P. C.
Attorney for Plaintiffs-Appellants
100 Church Street
New York, N. Y. 10007
(212) 732-9000

LEAHEY & JOHNSON
Attorneys for Defendant-Appellee
A & G Company, Inc.
120 Wall Street
New York, N. Y. 10005

NORMAN C. HARLOWE
Attorney for Defendant-Appellee
Saadi Ibrahim
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New York, N. Y. 10013

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS,
SECOND CIRCUIT.

-----X

MOHAMED ALI and NADIA ALI,

Plaintiffs-Appellants,

-against-

A & G COMPANY, INC. and SAADI IBRAHIM,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK.

-----X

DOCKET ENTRIES.


DATE	NR.	PROCEEDINGS
03-10-75	1	Filed Complaint and Issued summons.
04-9-75	2	Filed summons & Marshal's return. Served: Saadi Ibrahim By: R. Ibrahim 3-27-75 A & G Co. A. Ghaly 3-27-75
6-26-75	3	Filed ANSWER to complt by deft A & G Co.
6-26-75	4	Filed deft (A & G Co.)notice of examination before trial.
7-30-75	5	Filed deft (A&G) demand that pltffs answer interrogs.
8-20-75	6	Filed pltffs interrogs to deft (A&G Co.)
8-20-75	7	Filed pltffs answers to deft (A&G Co.) interrogs.
10-17-75		PRE-TRIAL CONFERENCE HELD BY J. MacMahon
11-7-75		Filed ANSWER to complt by deft (Ibrahim).
11-25-75		Filed pltffs supplemental answers to deft (A & G's) interrogs.

DOCKET ENTRIES

1-9-76	Filed pltffs trial memorandum of law.
1-9-76	Filed pltffs statement of facts.
1-9-76	Filed pltffs request to charge.
1-21-76	Filed Order that this action is dismissed as to pltffs Mohamed Ali & Nadia Ali for failure to prosecute.....MAC MAHON,J m/n
1-28-76	Filed pltffs notice of appeal to the USCA from the order dtd 1-13-76, dismissing the action for failure to prosecute. Copies sent To: Norman C. Harlowe, 401 B'way, New York, N.Y. 10013; & Leahey & Johnson 120 Wall St., New York, N.Y. 10005.
3-2-76	Filed pltffs affdvt & notice of motion to vacate the order of dismissal & restore the action to the calendar of the Court for inquest. Ret.3-9-76.
3-2-76	Filed affdvt by pltff re motion.
3-2-76	Filed pltffs memo of law in support of motion re dismissal for failure to prosecute.
2-24-76	Filed notice that original record on appeal has been Certified & transmitted to the USCA.
3-9-76	Filed atty's affirmation for deft (Saadi Ibrahim) in opposition to the motion for an order to vacate the dismissal.
3-18-76	Filed affirmation by deft A&G Co.'s att'y re interrogs.
3-30-76	Filed Memorandum #44139 & Order. This motion by pltffs to vacate an order made 1-13-76 dismissing this action for failure to prosecute & for failure to comply with a stipulated pre-trial order. For the various reasons indicated the motion is denied, in all respects.....MAC MAHON,J
4-19-76	Filed Pltffs' Notice of Appeal to USCA from Order dtd 3-30-76...Copies mailed on 4-19-76 to Leahey & Johnson and N. C. Harlow.

MARSHAL'S RETURN.

LG

U.S. MARSHALS SERVICE		INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.	
INSTRUCTION AND PROCESS RECORD			
PLAINTIFF	MOHAMED ALI and NADIA ALI		COURT NUMBER 75 CIV 1168
DEFENDANT	A & G COMPANY, INC. & SAADI IBRAHIM		TYPE OF WRIT Summons & Complaint
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN Saadi Ibrahim		
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)		
AT	145 6th Street, Richfield Park, New Jersey		
SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:			Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.
HARRY M. LIPSIG, P.C. 100 Church Street New York, New York, 10007			NO. 1 TOTAL 1 OF 1
			CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.
Attention: Lawrence Golaniirsch			SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.
SPECIAL INSTRUCTIONS:			

4a

MARSHAL'S RETURN

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR Harry M. Lipsig, P. C.		TELEPHONE NUMBER 732-9000	DATE 3/11/75
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE			
Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.	DEPOSIT / CODE 54	DIST. OF ORIGIN SD	DISTRICT TO SERVE SD
I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK <i>[Signature]</i>		LOCATION OF SUB-OFFICE OF DIST. TO SERVE DATE 3/10/75
<input checked="" type="checkbox"/> I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.			
<input type="checkbox"/> I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.			
NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) REFAAT IBRAHIM - BROSTER IN LAW			<input checked="" type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)			FEE (If applicable) \$ 4.00
DATE(S) OF ENDEAVOR (Use Remarks if necessary)			MILEAGE \$ 3.36
DATE OF SERVICE 3/27/75		TIME 8:30 AM	SIGNATURE OF U. S. MARSHAL OR DEPUTY <i>Ronald F. Hupp</i>
REMARKS <div style="font-size: 1.5em; margin-top: 20px;"> 4/9/75 Please Remit PD 4/11/75 # 1942 </div>			

All Processes Accounted For

Initial Deposit: **\$ 12.80**

Cost for Service: **\$ 12.80**

Balance Due: **\$ 0.00**

Please make remittance payable to U. S. Marshal, U. S. Courthouse, Foley Sq., New York, NY 10007

MARSHAL'S RETURN

U.S. MARSHALS SERVICE

INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF

MOHAMED ALI and NADIA ALI

COURT NUMBER

75 CIV 168

DEFENDANT

A & G COMPANY, INC. & SAADI IBRAHIM

TYPE OF WRIT

Summons & Complaint

SERVE

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

A & G Company, Inc.

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

~~145 1/2 Street, Bloomfield Park, New Jersey~~

AT

201 Sip Avenue, Jersey City, New Jersey

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

HARRY H. LIPSIG, P.C.
100 Church Street
New York, New York, 10007

Attention: Lawrence Goldhirsch

SPECIAL INSTRUCTIONS:

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.

NO. 1 TOTAL

2 OF 2

CHECK IF APPLICABLE:

☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

6a

MARSHAL'S RETURN

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR <u>Harry H. Linsig, P.C.</u>	TELEPHONE NUMBER <u>732-9000</u>	DATE <u>3/10/75</u>
--	-------------------------------------	------------------------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	DEPOSIT/CODE →	DIST. OF ORIGIN <u>24</u>	DISTRICT TO SERVE <u>50</u>	LOCATION OF SUB-OFFICE OF DIST. TO SERVE
	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK <u>[Signature]</u>			DATE <u>3/14/75</u>

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) <u>MR. ADOLPH G. HALL (STORE MGR.)</u>	<input checked="" type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above) <u>205 SYP AVE. JERSEY CITY, N.J.</u>	
DATE(S) OF ENDEAVOR (Use Remarks if necessary)	FEE (If applicable) <u>\$3.00</u>
DATE OF SERVICE <u>3/27/75</u>	MILEAGE <u>\$1.44</u>
TIME <u>1:00 PM</u>	SIGNATURE OF U.S. MARSHAL OR DEPUTY <u>[Signature]</u>

REMARKS

ADDRESS 205 NOT 201/280
Please Remit

10-4/11/75
H 1962

7a

SUMMONS.

SUMMONS IN A CIVIL ACTION

D. C. Form No. 46 Rev. (6-49)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO.

MOHAMED ALI and NADIA ALI,

Plaintiff s ,

v.

A & G COMPANY, INC. and SAADI IBRAHIM,

Defendant s .

SUMMONS

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon Harry H. Lipsig, P. C.
plaintiff's attorney , whose address 100 Church Street, New York, New York, New York,
10007

an answer to the complaint which is herewith served upon you, within 20 days after service
of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default
will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date: New York, New York
March 10th, 1975

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT.

G:el

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MOHAMED ALI and NADIA ALI,

Plaintiffs,

- against -

A & G COMPANY, INC. and SAADI IBRAHIM,

Defendants.

COMPLAINT

PLAINTIFFS DEMAND TRIAL
BY JURY

-----X

Plaintiffs by their attorney, HARRY H. LIPSIG, P. C.,
allege:

1. At all times hereinafter mentioned plaintiff, MOHAMED ALI, a parking lot owner, residing at 141-09 84th Drive, Jamaica, New York, was and is an Egyptian Citizen.

2. Plaintiff, NADIA ALI, is a housewife and citizen of Egypt and resides with her husband, MOHAMED ALI at 141-09 84th Drive, Jamaica, New York.

3. Upon information and belief, defendant, A & G COMPANY, INC., is a corporation incorporated under the laws of the State of New Jersey having its principal place of business at 201 Sip Avenue, Jersey City, New Jersey.

4. Upon information and belief, defendant, SAADI IBRAHIM, is a citizen of the State of New Jersey, residing at 145 6th Street, Richfield Park, New Jersey.

5. The amount in controversy herein exceeds the sum of Ten Thousand (\$10,000.00) Dollars, exclusive of interest and

COMPLAINT

costs.

6. By virtue of the diversity of citizenship herein and by reason of the amount in controversy, this Honorable Court has jurisdiction of the subject matter hereof and the parties herein.

7. Upon information and belief, defendants are regularly engaged in the business of packaging, advertising and marketing Egyptian Specialty Foods.

8. Defendant, A & G COMPANY, INC., invited the public including plaintiff, MOHAMED ALI as a patron and warranted that all articles of food furnished to its patrons were good, sound, healthful, wholesome food properly prepared and free from defects and fit for human consumption.

9. On or about February 8th, 1975, the aforesaid plaintiff entered the store of defendant A & G Company, Inc. and relying upon said warranty, ordered, received and paid for a certain food known as "Fascih" or "Boore" a salted and pickled whole fish.

10. Said food was processed by defendant, SAADI IBRAHIM.

11. Upon information and belief, the said food so furnished to the plaintiff by the defendant as aforesaid, was not good, sound, healthful wholesome food, well prepared and adequately cooked, was not free from defects and not fit for human consumption, in that it contained substances or organisms which would and did in fact cause the plaintiffs to contract Botulism and to become ill.

COMPLAINT

12. Upon information and belief, that by reason of the foregoing the plaintiff MOHAMED ALI, was made severely ill and weak and infirm and his entire system became infected and poisoned with the Botulism toxins contained in the food served by the defendant which he had consumed and the plaintiff suffered and still suffers intense pain and discomfort in his body and general lassitude and fatigue, and by reason of the sickness the plaintiff has been incapacitated and has been obliged to undergo medical care and attention and was unable to perform his usual duties and vocation and will never fully recover from the effects of said infection and poisoning, and was otherwise injured, all to his damage in the sum of One Million (\$1,000,000.00) Dollars.

SECOND CAUSE OF ACTION

13. Plaintiff repeats, reiterates and realleges each and every allegation numbered "1" through "12" inclusive, as if fully set forth herein.

14. Solely by reason of defendants' negligence in handling, preparation and cooking of the said food, the food hereinabove referred to furnished to the plaintiffs and consumed by plaintiffs was infected with Botulism toxins which would and did cause illness; that the poisoned and deleterious food served to the plaintiffs was so served as a result solely through the negligence of the defendant herein, its agents, servants and employee.

15. By reason of the foregoing, plaintiffs were damaged in the sum of One Million (\$1,000,000.00) Dollars.

COMPLAINT

THIRD CAUSE OF ACTION

16. Plaintiff, NADIA ALI, repeats, reiterates and realleges each and every allegation numbered "1" through "15" inclusive, as if fully set forth herein.

17. Plaintiff, NADIA ALI, is the lawful wife of plaintiff, MOHAMED ALI, and as such is entitled to his affection, comfort and services.

18. By reason of the aforesaid, plaintiff, NADIA ALI, lost the service, society and comfort of her husband and has been damaged in the sum of \$100,000.00.

WHEREFOPE, plaintiffs demand judgment against the defendants in the First cause of action in the sum of \$1,000,000.00; on the Second cause of action in the sum of \$1,000,000.00 and on the Third cause of action in the sum of \$100,000.00, together with costs and disbursements with interest from the 17th day of February, 1975.

Yours, etc.

Harry H. Lipsig 16
HARRY H. LIPSIG, P. C.
Attorney for Plaintiffs
100 Church Street
New York, New York, 10007

ANSWER OF DEFENDANT A & G COMPANY, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MOHAMED ALI and NADIA ALI, :

Plaintiffs, 75 CIV. 1168

-against- :

A & G COMPANY, INC., and
SAADI IBRAHIM, :

Defendants. :

-----X

Defendants, A & G COMPANY, INC., by their attorneys, LEAHEY
& JOHNSON, answering the complaint herein, allege as follows:

FIRST: Deny sufficient knowledge or information to form a
belief as to any of the allegations contained in paragraphs of the
complaint numbered "1", "2" and "12", inclusively.

SECOND: Deny each and every allegation contained in
paragraphs of the complaint numbered "5", "6" "8" through "11", inclu-
sively.

ANSWERING SECOND CAUSE OF ACTION

THIRD: Defendants, A & G COMPANY, INC., answering paragraph
"13" repeats and reiterates each and every denial and admission concerning
paragraphs "FIRST" through "ELEVENTH" inclusive of plaintiffs' complaint
in the answer thereto with the same force and effect as though fully set
forth herein at length.

ANSWER OF DEFENDANT A & G COMPANY, INC.

FOURTH: Defendants, A & G COMPANY, INC., deny each and every allegation contained in paragraphs "14" and "15" both inclusive.

ANSWERING THIRD CAUSE OF ACTION

FIFTH: Defendants, A & G COMPANY, INC., answering paragraph "16" repeats and reiterates each and every denial and admission concerning paragraphs "1" through "15" inclusive of plaintiffs' complaint in the answer thereto with the same force and effect as though fully set forth herein at length.

SIXTH: Deny sufficient knowledge or information to form a belief as to any of the allegations contained in paragraph of the complaint numbered "17", inclusively.

SEVENTH: Deny each and every allegation contained in paragraph of the complaint numbered "18", inclusively.

WHEREFORE, defendants demand judgment dismissing the complaint of plaintiffs with costs and disbursements of this action and for such other, further and different relief as to the Court may seem just and proper in the premises.

Dated: New York, New York
June 23, 1975

Attorneys for Defendant
A & G COMPANY, INC.
120 Wall Street
New York, New York 10005

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x		
	:	
MOHAMED ALI and NADIA ALI,	:	
	:	
Plaintiffs,	:	DEMAND FOR
	:	<u>INTERROGATORIES</u>
-against-	:	
	:	75 Civ. 1168
A & G COMPANY, INC., and	:	<u>L.M.M.</u>
SAADI IBRAHIM,	:	
	:	
Defendants.	:	
	:	
- - - - -x		

PLEASE TAKE NOTICE, that the defendant, A & G Company, Inc., herein demands that the plaintiffs herein answer the following interrogatories under oath, answers to be served within 30 days in accordance with Rule 33, of the Federal Rules of Civil Procedure.

1. What is your full name?
2. Have you ever been known by any other name or nickname?
3. Has your name ever been legally changed.
4. What is your present citizenship status in the United States?
 - (a) Are you a citizen of the United States?
 - (b) If so, are you a naturalized citizen?
 - (c) If so, on what date and place were you naturalized as a citizen?

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

- (d) Are you a citizen or have you been a citizen of any other country?
- (e) If so, what country and for how long were you a citizen?
- 5. When and where were you born?
- 6. What is your present address?
- 7. How long have you lived at your present address?
- 8. State the address of each residence you have occupied during the past 10 years and indicate the approximate dates of each such occupancy.
- 9. Are you married?
- 10. If so, state:
 - (a) The date and place of your marriage;
 - (b) Your wife's maiden name; and
 - (c) The name and age of each child born of this marriage.
- 11. With respect to your business occupation or employment, state, as of February 8, 1975:
 - (a) The nature of your work or duties;
 - (b) The name and address of your employer or of your business;
 - (c) Your gross rate of pay per month; and
 - (d) Your total hours of work per week.
- 12. What is your present business occupation, or employment?

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

13. With respect to your present business or occupation, or employment, state:
 - (a) The nature of your work duties;
 - (b) The name and address of your employer or of your business;
 - (c) Your present rate of gross pay per month; and
 - (d) Present total hours of work per week.
14. List all your businesses or occupations or employment for the past 10 years, together with the dates inclusive of all business or occupations.
15. For each business or occupation, state:
 - (a) The nature of your work or duties;
 - (b) The name and address of your employer or business address;
 - (c) Your last rate of gross monthly pay or income from such business or occupation; and
 - (d) Reason for termination of employment or business.
16. State your social security number.
17. Have you ever been a member of the armed forces of the United States or any other country?
18. If so, state:
 - (a) Your serial number;
 - (b) Branch of service;
 - (c) Date and places of induction and discharge;

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

- (d) Approximate period of service; and
 - (e) Type of discharge.
19. Give names and addresses of all high schools, colleges, or universities attended and inclusive dates of attendance at each.
20. Did you receive any degrees from such institutions?
21. If so, for each degree, state:
- (a) Type of degree;
 - (b) Date received; and
 - (c) Institution from which received.
22. Have you ever received any training, at trade schools or on the job or elsewhere, in any particular jobs, trades, skills, or activities?
23. If so, give the following information for each type of training:
- (a) Dates during which this training was received;
 - (b) Address of the place at which this training was received;
 - (c) The nature of this training; and
 - (d) Describe the job, skill, trade or activity you were trained to perform.
24. Have you ever been a party to any litigation prior to this action?
25. If so, state:
- (a) The nature of the suit;
 - (b) The date, court, and place where the suit was filed;

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

- (c) The names and addresses of all plaintiffs and defendants and other parties and their attorneys;
 - (d) The present status of each suit; and
 - (e) If concluded, the result of each suit.
26. Have you ever filed or made a formal or informal claim of an industrial accident or injury?
27. If so, state:
- (a) The circumstances, nature and extent of the injury or injuries;
 - (b) The names and addresses of the employers and of the examining physicians;
 - (c) The names of the superiors or officers of boards or tribunals before which or to whom the claims were made or filed, and the dates when made or filed; and
 - (d) The amounts and dates of each award or payment.
28. Have you ever received health or accident insurance benefits, Workmen's Compensation payments, disability benefits, or pensions, accident compensation payments or veterans' disability insurance or compensation awards, including but not limited to the injuries alleged in this action?
29. If so, give the following information for each type received:

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

- (a) Amounts of the benefits, awards, or payments per month;
 - (b) Inclusive dates during which you received such amounts; and
 - (c) Names and addresses of persons, agencies, departments, companies or corporations from which you received such amounts.
30. Have you undergone any physical or medical examinations during the past 10 years?
31. If so, give the following information for each examination:
- (a) Date;
 - (b) Address or place where examined;
 - (c) Name and address of party who examined you;
 - (d) Type of examination; and
 - (e) Reason for examination.
32. What was the general condition of your health during each of the 10 years preceding the accident alleged in this action?
33. If the condition of your health was other than normal for any year, give the following information for each year:
- (a) The complaints or conditions from which you suffered;

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

- (b) The names and addresses of all persons who examined you or treated you, or with whom you consulted, or each condition or complaint; and
 - (c) The date of each examination, treatment or consultation.
34. Have you ever been treated, examined or consulted by any party, or been confined to or treated at any hospital, sanitarium or institution for any disease or illness other than those already listed in answer to these interrogatories?
35. If so, give the following information for each illness or disease:
- (a) The nature of the illness or disease and parts of body affected;
 - (b) The name and address of party who treated, examined or consulted with you;
 - (c) The date or dates of treatment, examination or consultation;
 - (d) The name and address of each hospital, sanitarium or institution to which you were confined or where you were treated;
 - (e) Date of confinement or treatment at each place listed above; and
 - (f) Duration of period you suffered such illness or disease, with inclusive dates.

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

36. Have you had any form of mental illness, fits, or convulsions, fainting spells or dizzy spells?
37. If so, for each occurrence or illness, state:
- (a) Date of fit, spell, or convulsion or inclusive dates of mental illness; and
 - (b) Place where spell, convulsion or fit occurred or residence at time of mental illness;
38. Have you ever been a victim of, or treated for, alcoholism?
39. If so, state:
- (a) Date when alcoholism began;
 - (b) By whom treated; and
 - (c) Duration of treatment.
40. Have you ever been discharged or voluntarily left a position or job, or changed your residence, due to health reasons?
- (a) If so, state in detail the times, places and circumstances.
41. Have you ever been refused life, health or accident insurance?
- (a) If so, state name of insurance company and time of refusal.
42. Have you ever suffered ~~any~~ personal injuries prior to the injuries alleged in this action?

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

43. If so, give the following information for each injury:

- (a) Date of injury;
- (b) Nature and extent of injury together with parts of body affected;
- (c) Names and addresses of all doctors, physicians or practitioners who treated, examined you or consulted with you for the injury;
- (d) Last date each treated, examined or consulted with you for the injury;
- (e) Name and address of any hospital, sanitarium, or institution where you received treatment or where confined for the injury; and
- (f) Date of treatment or confinement.

44. Did you personally purchase the White fish that you allege was contaminated?

45. If so, state:

- (a) The date and time of the purchase;
- (b) The name and address of the store where it was purchased;
- (c) The description of person or persons who sold the fish;
- (d) The previous and/or subsequent times you purchased fish at the store listed in the complaint; and
- (e) Where in the premises the fish was kept.

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

46. If you did not make the purchase, state:

- (a) The name and address of the person who made the purchase;
- (b) Whether the purchaser was a member of your household, and, if so, your relationship to the purchaser;
- (c) The name and address of the person who furnished the money to make the purchase;
- (d) Whether the purchase was made at your request;
- (e) When did you or a member of your household receive the fish purchased;
- (f) Had you received this type of fish before from the person named in 12(a);
- (g) Did you or any member of your household tender or pay the person or persons listed in 12(a) for the White fish alleged to be contaminated;
- (h) At what hour of the day was the White fish purchased;
- (i) How was the White fish transported by the purchaser from the store;
- (j) How was the fish stored from the time of purchase until you received the fish;
- (k) Did the person in 12(a) purchase the same type of fish for himself or herself; and
- (l) Did the person in 12(a) consume the same type of fish for himself or herself?

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

47. How long did you keep the fish before consuming it?
48. Where was it kept from the time it was in your household until the time of consumption?
49. Was it kept under refrigeration at all times prior to use?
50. If not, state:
 - (a) The approximate length of time it was not under refrigeration between the time of purchase and the time it was placed in your refrigerator;
 - (b) How long it remained out of the refrigerator prior to its use; and
 - (c) Temperature of place said White fish was kept prior to consumption.
51. Describe the manner in which the fish was packaged when you first received it.
 - (a) Was the fish whole;
 - (b) If not, what portions of fish were removed when you first obtained it;
 - (c) What portion of the fish, if any, did you removed prior to consumption;
 - (d) When were those portions removed and by whom;
 - (e) Was the fish when first received in any liquid;
 - (f) Was that liquid removed; and
 - (g) If so, when and by whom?

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

52. Did you or any member of your household open the packaged White fish? If so, state:
 - (a) The date and hour it was first opened; and
 - (b) The date and hour the contents of the container were removed.
53. Was the package or container bent or damaged in any way before it was opened?
54. If so, describe the damage, the packaging, including the material and color.
55. Was there any visible evidence of leakage from the container before it was opened?
56. If so, describe the leakage and its cause, if known.
57. Describe the physical condition of the fish when you first observed it, including, but not limited to, color, weight, odor and taste.
58. Had you ever served or eaten this type of fish, prepared as Faschin or Boore, prior to the occasion referred to in your complaint?
59. If so, state:
 - (a) Whether you noticed any difference in the appearance of the fish that you allege was contaminated from that previously consumed, and, if so, a detailed description of the difference.

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

60. Was the fish mixed with, or marinated in, any other food prior to its consumption by you?
61. If so, state:
- (a) Each ingredient that it was mixed with and when each ingredient is added;
 - (b) The exact method of mixing;
 - (c) The length of time marinated; and
 - (d) Where was said fish and ingredients kept prior to consumption when in your possession.
62. Was the Faschin or Boore cooked at any time prior to consumption?
63. If so, state:
- (a) The method of cooking;
 - (b) The length of time it was cooked; and
 - (c) The method employed to determine whether it had been cooked sufficiently.
64. State the method of preparing Faschin or Boore utilized when the food complained of was consumed; and
- (a) Who prepared the Faschin or Boore made from the contaminated fish complained of.
65. What other foods and drink did you consume along with the Faschin or Boore that you allege was contaminated?
66. As to each such food, and drink, state:
- (a) The approximate amount eaten;

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

- (b) The form in which it was prepared; and
 - (c) The type of container in which it was cooked or otherwise prepared.
67. What is the name and address of each person who partook of the meal during which you ate Faschin or Boore?
68. As to each, state:
- (a) What foods were eaten;
 - (b) The foods served that were not eaten;
 - (c) Whether he became ill after the meal, and, if so, how long after the meal; and
 - (d) The amount of Faschin or Boore consumed by persons listed in Question #67
69. What was the length of time, in hours and minutes, after you finished the meal that you first became ill?
70. Describe the first symptoms of the illness.
- (a) Describe all symptoms experienced prior to hospitalization or medical treatment for the alleged injuries.
71. Have you ever had butolism prior to February, 1975?
72. State all foods or other substances that you are known to be allergic or hypersensitive to.
73. Did you have any samples of the fish that you allege was contaminated tested or analyzed?
- (a) Do you have a sample of the fish consumed and complained of?

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

74. If so, for each sample tested, state:
 - (a) The name, or other means of identification, and address of the person, firm or other entity who conducted the tests;
 - (b) The date and approximate time the sample was delivered for the purpose of testing or analysis;
 - (c) Where the sample had been stored between the time the container was opened and the time it was delivered for the purpose of testing or analysis; and
 - (d) A description of the container in which the sample was kept.
75. Did you receive a written report of the results of any tests or analyses?
76. If so, state:
 - (a) The date of the report;
 - (b) The name, or other means of identification, and address of the person who made the report;
 - (c) The name and address of each person known to have a copy of such report;
 - (d) The type and quantity of any inorganic contaminant found; and
 - (e) The type of any organic contaminant found.
77. If you will do so without a motion to produce, attach a copy of each written report of any test or analysis received to your answers to these interrogatories.

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

78. List the names of all physicians who treated, examined or rendered medical attention as a result of the injuries claimed.
- (a) Time and place of treatment listed above;
 - (b) Describe nature of treatment listed above;
 - (c) Where test conducted by the physician(s) listed above and if so, state time and place conducted and state general nature of test.
79. Were tests conducted by any governmental, medical or health agencies of the fish complained of:
- (a) If so, state name of governmental agencies;
 - (b) Time and place said examinations were performed; and
 - (c) State whether you have a copy of the reports from said agencies and annex hereto a copy of these reports with a bill for cost of reproduction.
80. Names and addresses of all expert witnesses consulted for the injuries alleged.
81. State whether you have or have requested reports from experts and annex hereto a copy of those reports with the appropriate cost.
82. Were you hospitalized as a result of this illness?
83. If so, state:
- (a) The name of each hospital where you were treated or confined;
 - (b) The length of time you remained in each hospital

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

84. Give the total amount of all doctor bills incurred for examination and treatment in connection with this illness.
85. If you will do so without a motion to produce, attach a copy of all statements or bills received for medical services to your answers to these interrogatories.
86. Itemize all other expenses you claim as special damages.
87. Have you lost any time from your work or employment solely as a result of this illness?
88. If so, state:
 - (a) The name and address of your employer;
 - (b) Your daily (or weekly, monthly, etc.) rate of pay;
 - (c) The amount of time lost.
89. Did you file income tax returns to the Federal Government and/or the State of New York for the years 1969, 1970, 1971, 1972, 1973 and 1974.
 - (a) If so, state whether you have copies of those returns; and
 - (b) If so, annex hereto said copies with a bill for reproduction.
90. State the names and addresses of all witnesses involved, and whether or not statements were obtained by you or on your behalf.
91. State whether statements were obtained by you or on your behalf of the defendants named herein.

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

92. Are you presently under medical care?
- (a) If so, state name and address of all doctors, nurses and therapists presently rendering medical attention; and
- (b) If so, state whether or not you are a patient in a hospital or medical center and the names and addresses of such institutions.
93. What are your present complaints of pain and physical discomfort as a result of the injuries claimed?
94. Are you and your wife, named in the complaint, presently living together?
95. How long have you been married?
96. What religion were you affiliated with at the time of the injury?
- (a) Was Faschin or Boore part of your religious dietary laws, habits or customs?
- (b) If so, which laws, habits or customs, and state whether or not said laws, habits or customs prescribe the manner of preparation for said food and when it must be eaten.

DEMAND BY DEFENDANT A & G COMPANY FOR INTERROGATORIES

PLEASE TAKE NOTICE that a copy of such answers must be served upon the undersigned within 30 days after the service of these interrogatories.

Dated: New York, N. Y.
July, 1975

LEAHEY & JOHNSON

By: Peter James Johnson
Attorney for Defendant
A&G Co., Inc.
Office & P. O. Address
120 Wall Street
New York, N. Y.

TO:
Harry H. Lipsig, Esq.
Atty. for Plaintiff
100 Church Street
New York, N. Y.

Saadi Ibrahim, Esq.
Co-defendant
145 6th Street
Ridgefield Park
New Jersey

SI

DEMAND BY PLAINTIFFS FOR INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MOHAMED ALY and NADIA ALY,

Plaintiffs,

DEMAND FOR
INTERROGATORIES

-against-

75 Civ. 1168
(L.M.M.)

A & G COMPANY, INC. and SAADI IBRAHIM,

Defendants.

-----X

PLEASE TAKE NOTICE that the plaintiffs herein demand that the defendant, A & G COMPANY, INC., answer the following interrogatories under oath, answers to be served within 30 days in accordance with Rule 33 of the Federal Rules of Civil Procedure.

1. State your full business name.
2. (a) State your full business address.
(b) How long have you been there?
3. Who are your 10 principle shareholders?
(a) Give their names, addresses and percentages of shares they hold.
(b) State their citizenships, status in the United States and length of residence herein.
4. Have you ever done business under another name?

DEMAND BY PLAINTIFFS FOR INTERROGATORIES

5. What type of business do you operate?
 - (a) Have you changed the type of business you do within the last ten years?
 - (b) If so, what were you doing prior to the current scope of operations?
6. Do you carry liability insurance?
 - (a) Who is the carrier? State address.
 - (b) State your policy number.
 - (c) State your policy coverage.
7. Have you ever prior to the incident complained of herein sold Fasikh a/k/a Boore before?
 - (a) If so, how often?
 - (b) To whom? State names and addresses.
8. In the past where and from whom did you procure the Fasikh?
9. Where and from whom did you procure the Fasikh complained of herein?
10. Who did you sell the Fasikh complained of herein to?
 - (a) Give names and addresses.
11. Have you received any other complaints from these purchasers relating to the Fasikh?
12. How was the Fasikh complained of herein packaged when purchased and received by you?
13. How was the Fasikh complained of herein packaged when sold by you?

DEMAND BY PLAINTIFFS FOR INTERROGATORIES

14. How was the Fasikh complained of herein stored by you after purchase by you and prior to sale to consumers?

15. What instructions, if any, do you give to consumers when they purchase Fasikh?

16. Describe the physical condition of the Fasikh complained of herein when purchased and received by you.

17. Describe the physical condition of the Fasikh complained of herein when you sold it.

18. What type of container did you sell the Fasikh complained of herein in?

19. Did the condition of the Fasikh complained of herein when you sold it differ in any order to that of Fasikh sold at prior times?

20. Have you ever received a summons, citation or warning from any Federal, State or local health authority pertaining to the condition of your store or the conditions therein?

21. If so, give the

- (a) Dates.
- (b) Name of the complaining authority.
- (c) Reason for the summons, citation or warning.
- (d) Disposition.
- (e) Corrective action taken by you, if any.

22. Do you have any samples of the fish complained of

DEMAND BY PLAINTIFFS FOR INTERROGATORIES

herein?

Dated: New York, New York
August 19, 1975

51
HARRY H. LIPSIG, P.C.
Attorney for Plaintiffs
Office & P.O. Address
100 Church Street
New York, New York 10007

TO: LEAHEY & JOHNSON, Esqs.
Attorneys for Defendant
A & G COMPANY
120 Wall Street
New York, New York 10005

PLAINTIFFS' ANSWERS TO INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MOHAMED ALY and NADIA ALY,

Plaintiffs,

-against-

A & G COMPANY, INC. and SAADI
IBRAHIM,

Defendants.

ANSWERS TO
INTERROGATORIES

75 Civ. 1168
(L.M.M.)

-----X

Plaintiffs, by HARRY H. LIPSIG, P.C., answering the
demand for interrogatories of the defendant, A & G COMPANY, INC.:

1. Mohamed Ibrahim Aly.
2. No.
3. No.
4. United States Citizen.
 - a. Yes.
 - b. Yes.
 - c. August 12, 1975, Brooklyn, New York.
 - d. Was a citizen of Egypt.
 - e. 40 years.
5. February 4, 1935; Alexandria, Egypt.
6. 141-09 84th Drive, Jamaica, New York.
7. Five years.
8. Not available at this time.
9. Yes.

PLAINTIFFS' ANSWERS TO INTERROGATORIES

10. a. 1955, Egypt.
b. Nadia Hassan.
c. Yaser, 14 years, Ghada, 11 years, Zeyad, 10 years and Amal, 4-1/2 years.
11. a. President.
b. Amal Parking Corporation, 69-83 Third Avenue, New York, New York.
c. Approximately \$1,100.00 per month.
d. 40 hours per week.
12. See 11.
13. See 11.
14. Too remote.
15. Too remote.
16. 066-48-0880.
17. No.
18. Inapplicable.
- 19 to 21. High School, Faaroukia High School, Alexandria, Egypt, graduated 1951; College, Faculty of Commerce College, Alexandria, Egypt, Bachelor of Science of Commerce, awarded 1955; Specialized Trainings: Faculty of Commerce College, Alexandria, Egypt, awarded CPA 1956.
22. No.
23. Inapplicable.
24. No.

PLAINTIFFS' ANSWERS TO INTERROGATORIES

25. Inapplicable.
26. Not relevant to the instant action.
27. See 26.
28. See 26.
29. See 26.
30. Too remote.
31. See 30.
32. Good.
33. Too remote.
34. No.
35. Inapplicable.
36. No.
37. Inapplicable.
38. No.
39. Inapplicable.
40. No.
41. No.
42. Too remote.
43. See 42.
44. No.
45. Inapplicable.
46.
 - a. Samer Mikhail.
 - b. A friend.
 - c. Wife, Nadia.
 - d. yes.
 - e. On or about February 13th or 14th.

PLAINTIFFS' ANSWERS TO INTERROGATORIES

f. This question makes no sense and refers to paragraph 12(a). An answer will be provided if it is clarified.'

g. See F.

h. Unknown.

i. Subway.

j. Wrapped in paper given by store.

k. See F.

l. See F.

47. 1 to 1-1/2 days.

48. In the refrigerator.

49. Yes.

50. Inapplicable.

51. a. Yes.

b. Inapplicable.

c. None

d. Inapplicable.

e. No.

f. Inapplicable.

g. Inapplicable.

52. Inapplicable.

53. Inapplicable.

54. Inapplicable.

55. Inapplicable.

56. Inapplicable.

PLAINTIFFS' ANSWERS TO INTERROGATORIES

- 57. No different than on previous occasions.
- 58. Yes.
- 59. No.
- 60. No.
- 61. Inapplicable.
- 62. No.
- 63. Inapplicable.
- 64. Inapplicable.
- 65. Tea.
- 66. 1 cup.
- 67. Wife, Nadia, ate a small taste.
- 68. a. Inapplicable.
b. Inapplicable.
c. Question not clear.
d. See 67.
- 69. Approximately 36 hours.
- 70. Stomach ache on Sunday. On Monday morning respiratory difficulty and choking.
- 71. No.
- 72. Allergic to penicillin.
- 73. No.
- 74. Inapplicable.
- 75. Inapplicable.
- 76. Inapplicable.
- 77. Inapplicable.

PLAINTIFFS' ANSWERS TO INTERROGATORIES

78. Dr. Patel, Queens Hospital Center, 82-68 164th Street, Jamaica, New York, admitted February 17, 1975, discharged March 15, 1975, treated for botulism poisoning.

79. Unknown.

80. No decision has yet been made.

81. See 80.

82. Yes.

83. See 78.

84. No bills available at this time.

85. See 84.

86. Loss of salary \$2,400.00. Hired a replacement \$2,400.00.

87. Yes.

88. See 11.

89. Statements have been filed for 1970 through 1973, copies of these returns can be made available.

90. Not available.

91. Not available.

92. Yes, Dr. Hazzl, Dr. Martorano.

93. Shortness of breath.

94. Yes.

95. 20 years.

*(addones will be
applied shortly)*

PLAINTIFFS' ANSWERS TO INTERROGATORIES

96. Muslim.

a. No.

b. Inapplicable.

Dated: New York, New York
August 19, 1975

18
HARRY W. LIPSIG, P.C.
Attorney for Plaintiffs
Office & P.O. Address
100 Church Street
New York, New York 10007

TO: LEAHEY & JOHNSON, Esqs.
Attorneys for Defendant
A & G COMPANY, INC.
120 Wall Street
New York, New York 10005

ANSWER OF DEFENDANT SAADI IBRAHIM.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MOHAMED ALI and NADIA ALI,

Plaintiffs,

75 CIV. 1168

- against -

ANSWER

A & G COMPANY, INC., and SAADI IBRAHIM,
Defendants.

-----X
Defendant SAADI IBRAHIM, by his attorney NORMAN C. HARLOWE, answering the complaint herein alleges as follows:

FIRST: Denies sufficient knowledge or information to form a belief as to any of the allegations contained in paragraphs of the complaint numbered "1", "2", "3", and "12", inclusively.

SECOND: Denies each and every allegation contained in paragraphs of the complaint numbered "5", "6", "8" through "11" inclusively.

ANSWERING SECOND CAUSE OF ACTION

THIRD: Defendant SAADI IBRAHIM, answering paragraph "13" repeats and reiterates each and every denial and admission concerning paragraphs "First" through "Eleventh" inclusive of plaintiffs' complaint in the answer thereto with the same force and effect as though fully set forth herein at length.

FOURTH: Defendant SAADI IBRAHIM, denies each and every allegation contained in paragraphs "14" and "15" both inclusive.

ANSWER OF DEFENDANT SAADI IBRAHIM

ANSWERING THIRD CAUSE OF ACTION

FIFTH: Defendant SAADI IBRAHIM, answering paragraph "16" repeats and reiterates each and every denial and admission concerning paragraphs "1" through "15" inclusive of plaintiffs' complaint in the answer thereto with the same force and effect as though fully set forth herein at length.

SIXTH: Denies sufficient knowledge or information to form a belief as to any of the allegations contained in paragraph of the complaint numbered "17" inclusively.

SEVENTH: Denies each and every allegation contained in paragraph of the complaint numbered "18" inclusively.

WHEREFORE; defendant demands judgment dismissing the complaint of plaintiffs with costs and disbursements of this action and for such other, further and different relief as to the Court may seem just and proper in the premises.

Dated: New York, N.Y.
October 28, 1975

NORMAN C. HARLOWE
Attorney for Defendant IBRAHIM
401 Broadway
New York, N.Y. 10013
966-2130

SUPPLEMENTAL ANSWERS OF PLAINTIFFS TO INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

MOHAMED ALY and NADIA ALY,

Plaintiffs,

-against-

A & G COMPANY, INC. and SAADI
IBRAHIM,

Defendants..

SUPPLEMENTAL ANSWERS
TO INTERROGATORIES

75 Civ. 1168
(L.M.M.)

-----x

Plaintiffs, by HARRY H. LIPSIG, P.C., for their supplemental answers to defendant, A & G COMPANY, INC.'S, interrogatories:

14. For the past four years, plaintiff, MOHAMED ALY, has been President of Amal Parking Corporation. Prior to this, plaintiff, MOHAMED ALY, was a certified public accountant for the Kuwait and Egyptian governments.

15. (a) President.

(b) Amal Parking Corporation, 69-83 Third Avenue,
New York, New York.

(c) Approximately \$1,100.00 a month.

(d) Still active in this business.

26. No.

28. No.

30. No.

SUPPLEMENTAL ANSWERS OF PLAINTIFFS TO INTERROGATORIES

46. (a) Samer Mikhail, 821 Bergen Avenue, Jersey City, New Jersey.

(f) No.

(h) Afternoon.

(k) No.

(l) No.

52. Yes. The fish was removed from the store's newspapers upon arrival at the Aly home; the fish was placed in a jar of vegetable oil, covered and refrigerated until it was consumed.

53. There was only newspaper wrapping as provided by the defendant, A & G COMPANY, INC.

54. No damage was apparent.

55. No, no container was provided and no visible leakage in the container the fish was placed in at the plaintiffs' home.

56. Inapplicable.

57. No different than on previous occasions, nothing appeared out of the ordinary.

58. Yes.

59. No apparent differences.

64. The fish was removed from the container and eaten without any further preparation.

SUPPLEMENTAL ANSWERS OF PLAINTIFFS TO INTERROGATORIES

68. The plaintiff, MOHAMED ALY, had nothing else to eat. Plaintiff, NADIA ALY, had only a small taste, the entire fish was consumed by plaintiff, MOHAMED ALY. He first noticed discomfort the following day, i.e., Sunday, February 16, 1975. He became critically ill on Monday, February 17, 1975.

69. Illness became highly apparent approximately 36 hours after consumption, i.e., on Monday, February 17, 1975, with minor distress being noted first on Sunday, February 16, 1975.

75. Yes, FDA report, a copy of which was provided to defendant, A & G COMPANY, INC., on October 17, 1975.

78. Plaintiff was admitted to Queens Hospital Center on February 17, 1975, was there approximately three days and then transferred on February 20, 1975 to Triborough Hospital until his discharge on March 15, 1975.

79. Only report existing to plaintiff's knowledge is cited in answer 75.

80. No expert witnesses have been consulted to the present time.

84. Hospitalization \$3,210.00

Dr. Martorano, 141-51 84th Drive, Jamaica, New

SUPPLEMENTAL ANSWERS OF PLAINTIFFS TO INTERROGATORIES

York 11435, approximately \$30.00.

Dr. Charles Hozzi, 1000 Park Avenue, New York,
New York 10028, approximately \$200.00.

Dated: New York, New York
November 18, 1975

Yours, etc.,

HARRY M. LIPSIG, P.O.

by


EDWARD MILSTEIN

(Associated with the firm)
Attorney for Plaintiffs
Office & P.O. Address
100 Church Street
New York, New York 10007

TO: LEAHEY & JOHNSON, Esqs.
Attorneys for Defendant
A & G COMPANY, INC.
120 Wall Street
New York, New York 10005

ORDER GRANTING RELIEF AGAINST PLAINTIFFS FOR FAILURE TO
APPEAR FOR TRIAL.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MOHAMED ALI and
NADIA ALI,

Plaintiff(s),

-against-

A & G. CO. and
IBRAHIM SAADI,

Defendant(s). :
-----X

Civ. No. 75-1168 LFM

: ORDER GRANTING RELIEF
AGAINST PLAINTIFFS
: FOR FAILURE TO APPEAR
FOR TRIAL.

It appearing that counsel were duly notified at a pre-trial conference held October 17, 1975 and by stipulated Pre-Trial Order No. 2, made on that date, that this action would be added to the reserve trial calendar of the undersigned on or after January 9, 1976 and that, thereafter, this action would be published in the New York Law Journal on the undersigned's ready trial calendar for trial, on short telephonic notice, when reached in order; that counsel were duly notified by telephone, by letter, and by daily publication in the New York Law Journal, commencing January 9, 1976, that this action had been added to the published ready trial calendar, to be tried upon short telephonic notice substantially in the order of the cases listed; that counsel for plaintiffs

☐ failed to appear after having been duly notified by telephone on _____ to appear for trial on _____ at _____ M., in Room _____;

☐ failed to be available to receive telephonic notice to appear for trial,

☐ failed to acknowledge receipt of a telephonic message left with a responsible person in counsel's office;

☒ appeared and reported that he was unable to communicate with plaintiffs despite calls to plaintiffs each day for the past three days;

BEST COPY AVAILABLE

ORDER GRANTING RELIEF AGAINST PLAINTIFFS FOR FAILURE TO APPEAR FOR TRIAL

and that counsel for plaintiffs

☐ failed to apply for an adjournment of the trial at any time;

☐ failed to apply for an adjournment of the trial before the action was placed on the trial calendar;

☒ applied for an adjournment of the trial, which was denied, on January 9, January 13, and on January 14, 1976 at the opening of trial,

it is

ORDERED

☒ that this action be, and the same hereby is, dismissed as to plaintiff Mohamed Ali and Nadia Ali for failure to prosecute.

☐ that plaintiff be, and hereby is, granted judgment by default against defendant and an order shall be

☐ settled on notice,

☐ submitted without notice,

within ten (10) days, for the relief demanded in the complaint.

☐ that this action be, and the same hereby is, referred to for the taking of an inquest.

☐ that counsel for

☐ submit

☐ settle

an appropriate judgment, decree, or order, within ten (10) days, which shall not be inconsistent with the terms of this order.

Dated: New York, N. Y.
January 13, 1976

LOTD F. MACMARTON
VSD JUDGE

53a

NOTICE OF APPEAL, DATED JANUARY 21, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MOHAMED ALI and NADIA ALI,

Plaintiffs,

75 Civ. 1168
(L.M.M.)

-against-

NOTICE OF APPEAL

A & G COMPANY and SAADI IBRAHIM,

Defendants.
-----X

It is hereby given that MOHAMED ALI and NADIA ALI, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order of the Honorable Lloyd F. MacMahon, U.S.D.J., dated January 13, 1976 dismissing the above case as to the plaintiffs for failure to prosecute and entered in this action on the 21st day of January, 1976.

Dated: New York, New York
January 21, 1976

15/
HARRY H. LIPSIG, P.C.
Attorney for Plaintiffs
Office & P.O. Address
100 Church Street
New York, New York 10007

TO: NORMAN C. HARLOWE, Esq.
Attorney for Defendant
SAADI IBRAHIM
401 Broadway
New York, New York 10013

LEAHEY & JOHNSON, Esqs.
Attorneys for Defendant
A & G COMPANY
120 Wall Street
New York, New York 10005

NOTICE OF MOTION TO VACATE ORDER OF DISMISSAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOHAMED ALI and NADIA ALI,

Plaintiffs,

-against-

A & G COMPANY INC. and
SAADI IBRAHIM,

Defendants.

NOTICE OF MOTION

75 Civil 1168

L. M. M.

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of JOSEPH P. NAPOLI, sworn to the 26 day of February, 1976, the affidavit of MOHAMED ALI, sworn to the 25 day of February, 1976, the Order of Dismissal of this Court dated January 13, 1976 and upon all the prior pleadings and proceedings heretofore had and filed herein, the undersigned will move this Court at a term for the hearing of motions to be held in Room 2704 of the United States District Courthouse for the Southern District of New York located at Foley Square, Manhattan, City and State of New York on the 9 day of March, 1976 at 2:15 p.m. on that day or as soon thereafter as counsel can be heard for an order, pursuant to Rules 60 and 37 of the Federal Rules of

53a

NOTICE OF APPEAL, DATED JANUARY 21, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MOHAMED ALI and NADIA ALI,

Plaintiffs,

75 Civ. 1168
(L.M.M.)

-against-

NOTICE OF APPEAL

A & G COMPANY and SAADI IBRAHIM,

Defendants.

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It is hereby given that MOHAMED ALI and NADIA ALI, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order of the Honorable Lloyd F. MacMahon, U.S.D.J., dated January 13, 1976 dismissing the above case as to the plaintiffs for failure to prosecute and entered in this action on the 21st day of January, 1976.

Dated: New York, New York
January 21, 1976

151
HARRY H. LIPSIG, P.C.
Attorney for Plaintiffs
Office & P.O. Address
100 Church Street
New York, New York 10007

TO: NORMAN C. HARLOWE, Esq.
Attorney for Defendant
SAADI IBRAHIM
401 Broadway
New York, New York 10013

LEAHEY & JOHNSON, Esqs.
Attorneys for Defendant
A & G COMPANY
120 Wall Street
New York, New York 10005

NOTICE OF MOTION TO VACATE ORDER OF DISMISSAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MOHAMMED ALI and NADIA ALI,	:	
	:	
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-against-	:	<u>NOTICE OF MOTION</u>
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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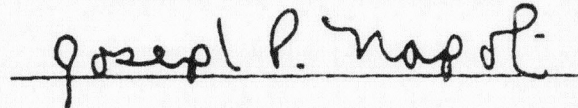
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NOTICE OF MOTION TO VACATE ORDER OF DISMISSAL

Civil Procedure, (1) vacating the order of dismissal of this Court for plaintiffs' alleged failure to prosecute heretofore made on January 13, 1976, (2) striking the answers of the defendants for their wilful failure to comply with plaintiffs' pre-trial discovery demands, (3) restoring this action to the calendar of this Court for inquest and for such other and further relief as to this Court may seem just and proper.

HARRY H. LIPSIG, P.C.
Attorney for Plaintiffs
Office & P.O. Address
100 Church Street
New York, New York 10007

BY:



A MEMBER OF THE FIRM

AFFIDAVIT OF JOSEPH P. NAPOLI, IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MOHAMED ALI and NADIA ALI,

Plaintiffs,

AFFIDAVIT

-against-

A & G COMPANY INC. and
SAADI IBRAHIM,

Defendants.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JOSEPH P. NAPOLI, being duly sworn, deposes and says:

I am an attorney and counsellor at law, a member of the firm of HARRY H. LIPSIG, P.C., attorney for the plaintiffs herein and make this affidavit in support of plaintiffs' motion for an order vacating the order of dismissal of this Court dated January 13, 1976, a copy of which is annexed hereto as Exhibit "A", striking defendants' answers for their wilful refusal to answer plaintiffs' interrogatories or appear for examinations before trial and restoring this action to the calendar for inquest.

This is an action to recover damages for extremely serious personal injuries caused by botulism poisoning. The

AFFIDAVIT OF JOSEPH P. NAPOLI, IN SUPPORT OF MOTION

causes of action alleged in the complaint arose on or about February 13th or 14th, 1975 when tainted fish prepared and sold by the defendants was ingested by plaintiff, Mohamed Ali.

Jurisdiction is based upon the diversity of citizenship of the parties.

Plaintiffs first retained your deponent's firm, HARRY H. LIPSIG, P. C., to prosecute their claim on March 10, 1975. This suit was filed on that same day.

Service of process on the defendants herein was completed by March 27, 1975. Issue was joined by the service of the answer of the defendant, A & G COMPANY INC. on June 24th, 1975 and of defendant, IBRAHIM SAADI on October 2nd, 1975.

On May 14th, 1975, plaintiffs' served a notice to take the oral deposition of defendants, scheduling same for June 9th, 1975. Defendants thereupon prevailed upon plaintiffs to accommodate them by adjourning said depositions. These depositions were adjourned four times, three of which were at the request of defendants. As a result of these adjournments, no examinations were ever conducted, although plaintiffs continually sought same and were ready to appear at a moment's notice.

AFFIDAVIT OF JOSEPH P. NAPOLI, IN SUPPORT OF MOTION

Plaintiffs received interrogatories from the defendant A & G COMPANY INC. on July 30th, 1975 and promptly answered them on August 19th, 1975. On this date, plaintiffs served their interrogatories on defendant A & G COMPANY INC. which to date have never been answered.

Although defendants claimed they were unhappy with plaintiffs' answers to their interrogatories at the pre-trial conference conducted before the Hon. Lloyd F. MacMahon on October 17th, 1975, at no time prior thereto did defendants ever raise any objection to said answers to plaintiffs' counsel by motion or other form of notice. Justice MacMahon ordered plaintiffs to supplement their answers. The additional information sought by defendants was in part given to the defendants immediately following the pre-trial conference in the corridor of the Courthouse and was thereafter followed with written supplemental answers on November 19th, 1975 when more information became available to our firm.

During the course of the pre-trial conference of October 17th, 1975, the Court criticized both sides for not having pursued or negotiated settlement prior to the conference, notwithstanding the fact that plaintiffs' representative advised the Court without contradiction that our firm was ready and willing to discuss and negotiate settlement, but that defendants insisted upon completion of oral depositions before they were willing to engage in any settlement discussions.

AFFIDAVIT OF JOSEPH P. NAPOLI, IN SUPPORT OF MOTION

At the conference, this Court instructed that all pre-trial discovery was to be completed by December 17th, 1975 and that the case was to be placed on the ready day trial calendar on January 9th, 1976.

From the date of the conference, October 17th, 1975, plaintiffs' counsel repeatedly attempted to settle this case and/or obtain a date for pre-trial examinations of all parties. Notwithstanding plaintiffs' efforts, defendant, A & G COMPANY, refused to cooperate and continually pleaded "give us a few days and we'll work it out", "etc.,". In a sincere effort to avoid burdening this Court which bears enough of a workload without the unnecessary added burden of motions concerning routine discovery matters, plaintiffs' counsel did not raise this matter with the Court until January 8th, 1976 when an urgent conference with the Court was sought. Counsel for plaintiffs' appealed to this Court for an extension of time so that discovery could be completed and the case disposed of without having to waste this Court's valuable time unnecessarily, this Court refused. On January 9th, 1976, this action appeared on the ready day calendar with approximately six cases ahead of it.

Plaintiffs' counsel conscientiously attempted to reach plaintiff by telephone without success on the 9th, 13th and 14th days of January, 1976 to advise of the impending trial.

AFFIDAVIT OF JOSEPH P. NAPOLI, IN SUPPORT OF MOTION

On January 14th, 1976, Wednesday morning, at 10:40 a.m., your deponent's firm received a telephone call to appear and open the trial at 11:00 a.m., twenty minutes later. At the appointed time, representatives of our office appeared before this Court to advise that plaintiffs' trial attorney was at that moment engaged on trial in the Supreme Court of the State of New York, for the County of New York, that plaintiffs had not been reached and were therefore unavailable and further that one of the defendant, Ibrahim Saadi and his attorney, Norman C. Harlowe were also not present and to therefore request an adjournment of the trial herein once again, whereupon this Court dismissed the case for failure to prosecute and after inviting counsel for defendant, A & G COMPANY INC. to make an appropriate motion to dismiss.

In view of the history of this litigation as set forth above, plaintiffs have at all times in a spirit of cooperation diligently and expeditiously sought to bring this action to a rapid conclusion. It is most ironic that the order of dismissal of this Court permits defendants to escape liability and thus rewards them for their deliberately dilatory behavior.

Plaintiffs have good and meritorious causes of action. Evidence received recently from the U.S. Food and Drug Administration conclusively proves that the defendants were marketing and selling contaminated and poisonous fish. A copy of the material received is attached hereto as Exhibit "B".

AFFIDAVIT OF JOSEPH P. NAPOLI, IN SUPPORT OF MOTION

To deny plaintiffs their day in Court as a result of the defendants' wilful refusal to cooperate would be antithetic to the interests of justice and to the intent of the Federal Rules of Civil Procedure. The case at bar was in litigation for a mere ten months and was dismissed six months after the joinder of issue with one defendant and three months after the joinder of issue with the other defendant. As is more fully discussed in plaintiffs' accompanying memorandum of law, to dismiss for failure to prosecute under the circumstances presented herein constitutes a clear abuse of discretion. The order of dismissal is significantly dated January 13th, 1976, one day prior to the Court's actual dismissal. It is respectfully submitted that the rights of a litigant should always take precedence over the decongestion of the Court's calendar.

WHEREFORE, it is most respectfully prayed that the order of this Court, dated January 13th, 1976 dismissing this action for failure to prosecute be withdrawn and vacated, the answers of defendants stricken for their wilful refusal to comply with plaintiffs' pre-trial discovery demands, this action restored to the calendar of this Court for inquest and for such other and further relief as to this Court may seem just and proper.

Sworn to before me this

26th day of February, 1975

Pamela August Hiazakis

Joseph P. Napoli

JOSEPH P. NAPOLI

PAMELA ANAGLOS HIAZAKIS
Notary Public, State of New York
No. 24-2352164
Qualified in Kings County
Commission Expires March 30, 1977

EXHIBIT B, IN SUPPORT OF MOTION--LABORATORY REPORTS.

-2-

A & G Company
Jersey City, N.J.
EI 2/23/75 LHR

SUMMARY OF FINDINGS

This inspection was conducted as a follow-up to NWK, Act. Dir. IBR, NWK/Supv memo 2/23/75. The assignment reported a botulism poisoning of a Queens, New York City, N.Y. resident, Muhammed Ali, who consumed some Fsikh, a salted preserved mullet. He was hospitalized in New York City within 5 hours of ingestion. Serum showed the toxin to be Botulism Type "E". Alleged source of the Fsikh fish was this firm. NWK-DO contacts with the firm on 2/22/75 identified a Mr. Saadi Ibrahim, Ridgefield Park, N.J. as the manufacturer. A sample of four Fsikh fish was collected by NWK-DO on 2/22/75 at this firm. (058-953H).

This inspection revealed that the firm is a family owned/operated firm operating as a local specialty Egyptian grocery store servicing the Egyptian neighborhoods of Jersey City and surrounding areas. Between 1/7 and 1/14/75, the firm received a lot of approximately 66 lbs. of Fsikh from the manufacturer Mr. Saadi Ibrahim, Ridgefield Park, N.J., contained in 3 used unlabeled plastic containers.

Management of A & G Company did not have any records to document receipt of the bulk Fsikh fish. Checkbook stubs showed 2/3/75 payment \$115.50 for the January shipment. The next preceeding Fsikh bulk purchase from Saadi Ibrahim had been in April 1974. No records exist to document this. Checkbook records show two payments to Saadi in October and November 1974 said to have been for the April 1974 delivery.

Management said that they sold retail only approximately 54 lbs. of the approximate 66 lbs. received. From memory, they were able to identify only nine of their customers of Fsikh fish. During the course of the inspection two additional customers were identified as a result of the recall notification efforts, for a total of 11 identified out of 15 to 20 possible customers. The firm's management estimated the possible number of customers.

Management decided to voluntarily recall and posted recall notices in English and Arabic in their store on 2/23/75. They verbally notified all customers of the recall and stock sample request beginning 2/23/75. Management conducted a total telephone recall notification and stock remnant survey, 2/22/75 with the nine customers they identified and one of the two customers later identified, On 2/23/75, the stock was located and no illnesses reported.

EXHIBIT B, IN SUPPORT OF MOTION

The store manager and owner, who are husband and wife, signed FD 463a, affidavits stating the facts of their operations and all aspects of their purchase and sale of the Fsikh fish.

This inspection revealed no additional stocks of Fsikh fish within the store.

HISTORY OF BUSINESS

A & G Company is operated as a retail grocery store under the sole ownership of Mrs. Wafa Ghaly. Her husband Mr. Adel Ghaly is manager of their grocery store which specializes in Egyptian food products, primarily.

Mrs. Wafa Ghaly stated that all ownership papers are in her name, only, but copies of these documents were not available. Mr. Adel Ghaly confirmed this information.

The store operations, located at 205 Sip Ave., Jersey City, N.J. sells only to the retail trade customers, generally residents of the local Egyptian community within Jersey City. Storage room facilities for the store are located in an unused store front located diagonally across the street on Garrison Street adjacent to the North East corner with Sip Avenue. The Ghaly family resides 4 blocks away at 2700 Kennedy Blvd., Apt 411, Jersey City where the business office for the store is maintained. The firm's books and records are maintained in a desk with file drawers, located in the anteroom section of their living room.

The majority of the food products sold in bulk or individually packaged units are from various import suppliers. Some bulk specialties are from various commercial domestic bulk sources. Among the Egyptian specialty products sold by this store is Fsikh, an ancient Egyptian food which is salted, preserved mullet (salt water fish).

This is the initial inspection of the firm and there is no previous FDA history on the firm.

Newark District Investigator Jennifer Jones sampled all remaining known stock of Fsikh fish, four fish with liquid in the original container, on 2/22/75 as sample #058-953H.

EXHIBIT B, IN SUPPORT OF MOTION

PERSONS INTERVIEWED

At the initiation of the inspection, I was accompanied by Inspector Dominick Adase. We initially visited the store location, 205 Sip Avenue, but it was closed. I then telephoned Mr. Adel Ghaly at his residence, 2700 Kennedy Blvd., Apt 411. Mr. Ghaly invited us into his residence where he stated that all of his store business office records were maintained.

Upon arrival at the Ghaly apartment, Inspector Dominick Adase and I presented our credentials to, and issued the FD 482 Notice of Inspection to Mr. Adel Ghaly, manager of the A & G Company. Later we were joined by FDA Investigators Samuel Jones and Anthony Amitrano, at which time they presented their credentials and we issued another FD 482 Notice of Inspection bearing all 4 signatures. While the other 3 investigators were present, Mr. Ghaly identified the suspected product to be the Fsikh fish.

Mr. Ghaly explained the use of the product in the home and how he sold it, briefly. He also identified the known customers as he had been able to recall them. Information developed which identified that Mrs. Wafa Ghaly, wife of Mr. Adel Ghaly, was the owner of record of the A & G Company. The other 2 FDA Investigators and the Inspector departed to visit the known consignees to conduct recall effectiveness checks. I issued another FD 482 Notice of Inspection to Mrs. Wafa Ghaly as owner of the A & G Company. The preceding FD 482's Notices of Inspection were issued to the A & G Company at the 2700 Kennedy Blvd., Apt. 411 address because it was the company office.

Along I then continued the inspection at the store location at which time I issued a FD 482 to Mr. Adel Ghaly, as the most responsible person present. Shortly thereafter Mrs. Wafa Ghaly was present and I issued another FD 482 to her at the store address, as the owner of the firm. Upon completion of the inspection at the store locations the inspection continued, after a brief interruption to cover other assignments, at the Ghaly apartment residence.

All of the inspectional operations conducted at the Ghaly apartment residence were with the full cooperation and upon the direct invitation of Mr. & Mrs. Ghaly because they did not wish to conduct long discussions in their crowded store, as well as the greater comfort available at the apartment.

Mr. Adel Ghaly and Mrs. Wafa Ghaly participated voluntarily in all aspects of this inspection and investigation. They both exhibited full and complete cooperation.

EXHIBIT B, IN SUPPORT OF MOTION

Mr. Adel Ghaly furnished virtually all of the information contained in this report other than that obtained thru direct observations. He provided access to all records, such as were available or maintained.

I directed questions in several subject areas to Mrs. Wafa Ghaly who consistently deferred to her husband for the information because he is the primary responsible person who operates the firm on a day to day basis.

At the conclusion of the inspection, both Mrs. Wafa Ghaly, and Mr. Adel Ghaly voluntarily agreed to and signed extensive FD 463a affidavits detailing business operations and responsibilities as pertinent to the suspected botulism follow-up investigation related^v the Fsih fish that they sold in their store. The affidavits accompany this report as exhibits #7 & 8.

During a portion of the inspection at the store location and storage store location, I was voluntarily accompanied by Mr. Ralph J. Campana, Chief Sanitary Inspector, Jersey City Division of Health, 280 Grove Street, Jersey City, N.J. Phone number HE4-3600 ext 30. He appeared during the course of the inspection and volunteered to assist me because of his interest and involvements on 2/22/75.

Late in the afternoon of 2/23/75, I was joined by Dr. Ronald Altman, New Jersey State Department of Health Epidemiologist, Trenton, N.J. and his associate, Dr. Wageeh Istafamous, employed normally at N.J. Dept of Health VD Clinic in Newark. Dr. Altman explained that Dr. Istafamous was assisting him in these investigations both as a professional and as an interpreter of the Arabic language. They obtained additional information for their investigations.

INDIVIDUAL RESPONSIBILITIES

Mrs. Wafa Ghaly stated that she is the owner of the A & G Company which operates as an Egyptian specialty food grocery store. She stated that her husband Adel Ghaly is responsible for all operations of their grocery store and that he purchases all food and merchandise sold in the store. She continued, stating that Adel Ghaly operates the store on a day to day basis and does a lot of the direct sales to the retail customers.

Mrs. Wafa Ghaly stated that she does not participate in the operations of the A & G Company. She stated that only on a very irregular basis will she occasionally work in the store performing some retail sales.

EXHIBIT B, IN SUPPORT OF MOTION

Mrs. Ghaly stated that she is employed full time as a bookkeeper at Merrill Lynch, Pierce, Fenner and Smith, 1 Liberty Plaza, New York, N.Y. 10006. She stated that both Adel and herself have full authority to sign all checks for all debts owed by the firm. However in fact only Adel writes and signs all checks and pays the bills.

Adel Ghaly concurred with the preceeding statement and admitted to full responsibilities as described in preceeding paragraphs. I observed that all of the checkbook stubs appeared to be in Adel Ghaly's handwriting. I also observed him functioning with full operational authority in the store operations during the course of the inspection.

Mr. Adel Ghaly stated that his assistant, Magdi Mahfouz operates the store in his absence and is usually always present when the store is operating.

PRODUCT LIABILITY INSURANCE

A&G Company
Mr. Adel Ghaly stated that he has full product liability insurance in a policy issued by the Allstate Insurance Co., home office Northbrook, Ill. thru the local agent, Edward J. Fox, Accounting Agent, 65 *St. P. Ave.* Jersey City, N.J.

Mr. Ghaly showed me the policy: Policy # 39 593 398 BPP; Policy period 7/19/74 to 7/19/77; Amounts: \$300,000.00 each occurrence; Comprehensive General Liability including product insurance.

PURPOSE OF INSPECTION

This inspection was conducted as follow-up to a reported botulism type illness occurrence in an individual named Mahammed Ali, located in Queens, N.Y., N.Y. Reportedly Mr. Ali consumed some Fsikh fish which had been purchased from this firm A & G Company, and manufactured by a Saadi Ibrahim, 145 South Ave., Ridgefield Park, N.J.

Preliminary investigation by Newark District revealed that a lot of Fsikh fish had been manufactured in a residential home by Saadi Ibrahim and sold to the A & G Company grocery store sometime in December 1974 or January 1975.

GENERAL STATEMENT

Mr. Adel Ghaly provided the information contained in the following paragraphs describing the firm's operations relevant to his receipt and sales of the Fsikh fish.

The majority of this information is provided in an affidavit FD 463a included with this report as exhibit #8.

EXHIBIT B, IN SUPPORT OF MOTION

Between January 7 and 14, 1975 the store received a shipment of approximately 66 lbs. of Fsikh fish from a manufacturer- Mr. Saadi Ibrahim, 145 South Street, Ridgefield Park, N. . The Fsikh was delivered by Mr. Saadi Ibrahim in his personal automobile. Mr. Ghaly said that the fish was received at the store either by himself or a former employee, Mr. Sadek Paulus, but did not recall the exact circumstances.

Mr. Ghaly said that Mr. Ibrahim told him that he (Saadi Ibrahim) personally made the Fsikh in his residence.

Mr. Ghaly continued stating that the shipment of fish was received in 3 plastic, closed containers, each containing approximately 20 to 22 lbs. of fish each. He stated that he did not have any records to document or remind himself of the exact date of receipt of the Fsikh or whether the store received all 3 containers at the same time or on different dates between 1/7 and 1/14/75. He said that the containers were 5 gallon capacities with the salted fish Fsikh stuffed tight inside to full capacity. Verbally, Mr. Ghaly stated that the plastic containers were reused 5 gallon containers with plastic screw caps which previously might have contained bulk imported olives or grape leaves. He could not remember whether he might have given these containers to Mr. Ibrahim at sometime previous. According to Mr. Ghaly he stated that Mr. Ibrahim could also have obtained these containers from one of many other sources. He continued stating that when he opened these containers of fish, they contained a salted liquid brine, as well as the fish. He stated that he never observed any evidence of the salt used by Ibrahim.

Mr. Ghaly continued by stating that he sells the fish directly from the containers, as received from Mr. Ibrahim. He stated that he did not do any processing of the fish after it was received at the store. He stated that he or his employees did not add anything into the containers and did not do anything to alter or change the product while he had it in the store.

Mr. Adel Ghaly stated that he paid Mr. Saadi Ibrahim on 2/3/75 with his store check #807 in the amount of \$115.50 for fish. He stated that he did not have the cancelled check returned from the bank, but that it was expected back on/after 3/5/75. He stated that he did not have any other records to document the January 1975 transaction. He usually pays Mr. Ibrahim \$1.75 /lb for the Fsikh fish. Mr. Ghaly provided me a copy of the store's current checkbook containing stubs beginning in June 1974. The check account is number 0270-0040-04-01-5818 in the name of "A & G Company, 205 Sip Avenue, Jersey City, N.J. 07306" at the bank "The Trust Company of New Jersey, Journal Square, Jersey City, N.J. 07306".

EXHIBIT B, IN SUPPORT OF MOTION

Mr. Adel Ghaly stated that he only purchased same Fsikh fish once from Mr. Ibrahim prior to 1/7/75. This single prior purchase occurred sometime in April 1974, but Mr. Ghaly stated that he does not have records to document the purchase or refresh his memory. He did state that he could not pay Mr. Ibrahim until October 1974. His checkbook record stub shows that Mr. Ghaly issued check #612 on 10/22/74 to "Saadi" for fish in the amount of \$88.25. The checkbook stubs also showed an undated stub for check number 674 to Mr. Saadi in the amount of \$45.00. Based on the check record stubs the check #674 was written sometime between 11/24/74 and 11/26/74. Mr. Ghaly stated the two checks totaling \$133.25 are the two payments covering the Fsikh fish purchased and received from Mr. Ibrahim in April 1974. Mr. Ghaly stated that he did not have the cancelled checks #612 and #674 in his possession. He stated that the cancelled checks are in the possession of his accountant Mr. Fayek Aziz, 91 Romaine Ave., Jersey City, N.J. (Resident Address) Reportedly he has offices in New York City, Manhattan, N.Y., address and firm name unknown to him.

Mr. Ghaly stated that he does not remember purchasing any Fsikh fish from Mr. Saadi Ibrahim prior to April 1974 because he did not know Mr. Ibrahim prior to that approximate date.

FSIKH PRODUCT HISTORY

Mr. Ghaly stated that Fsikh is a 2000 year old ancient Egyptian food prepared by using whole fresh mullet fish, partially drying it, stuffing all openings with salt, and then placing it into the containers.

He said all Egyptians know and relish Fsikh, and are aware of the following facts and handling precautions:

- (1) They know it is bacteria cured.
- (2) They know it should not be kept out of salt.
- (3) Should not keep it long because it smells.
- (4) Usually eaten immediately upon opening and cleaning.

Fsikh is eaten very heavily between Good Friday and Easter Sunday, and to lesser extent only in the preceeding 2 month seasonal period, according to Mr. & Mrs. Ghaly.

EXHIBIT B, IN SUPPORT OF MOTION

JANUARY 1975 SHIPMENT SALES ACCOUNTABILITY/CUSTOMER/CONSIGNEE LIST

Mr. Ghaly stated that he could have sold the 66 lb. lot received between 1/7 and 1/14/75 to any of his retail customers on a direct walk in basis between time of receipt and time of notification of the suspected botulism contamination problem, 1/22/75. He stated that he could provide the following accountability:

Received - 66 lbs., approx.

2/22 Sampled by N.J. State - 2 fish/4 lbs. total

1/22 FDA Sample - 4 fish/8 lbs. total

Not to be accounted for = 54 lbs. which is equivalent to about 27 fish. Each customer would buy 1 or 2 fish/2 lbs. each.

Hence approximately 15 customers may have purchased Fsikh from the January 1975 shipment.

Mr. Ghaly stated that he could only remember the names of 9 customers and was able to obtain their telephone numbers. He telephoned all 9 customers on 2/22/75 to inform them of the contaminated fish and dangers involved. He stated that he was told that all these customers informed him that they had eaten all of the purchased fish and no one had been made ill. None of the fish remained in consumers hands, according to Mr. Adel Ghaly. On 2/23/75, in our presence, Mrs. Wafa Ghaly again called all nine known customers to obtain their addresses. Mr. & Mrs. Ghaly furnished the following list of nine known customers who purchased the Fsikh. They were unable to identify anyone else, although they admitted that there were other customers.

They stated that generally their customers lived within the Jersey City Egyptian community, within an approximate one mile radius of Journal Square and their store. Mr. Ghaly stated that he does not have any lists of customers and does not have any credit charge account lists.

GHALY LIST

- (1) Ashraf Chobrial, 2560 Kennedy Blvd., Apt. 202, Jersey City, N.J.
Phone 333-6344. Purchased approximately 2/9/75.
- (2) Sabri Rizk, 2700 Kennedy Blvd., Apt. 103 or 101, Jersey City, N.J.
Phone 333-0834. Purchased approximately 2/3/75.
- (3) Samir Elrghidy, 165 West 25th Street, Bayonne, N.J.
Phone 437-2379. Purchased approximately 2/2/75.

EXHIBIT B, IN SUPPORT OF MOTION

- (4) Ramsiss Awadella, 96 North Ave., Bayonne, N.J. 2nd Floor
Phone 823-0813. Purchase date - unknown
- (5) Edward Chobrial, 770 Seventh Street, Secaucus, N.J. 07094
Phone 863-4881. Purchased approximately 1/23/75.
- (6) Karam Lawendy, 264 Clendenny Ave., Apt. C, Jersey City, N.J.
Phone 433-7386. Purchased approximately 2/8/75.
- (7) Ramsis Saliman, 30 Pensington Ave., Apt. 404, Jersey City, N.J.
Phone 451-2801. Purchased approximately 2/2/75.
- (8) Lotfy Wasset, 700 B Newark Ave., Apt. 316, Jersey City, N.J.
Phone 798-7819. Purchased 2/16/75.
- (9) Turkey Emil, 35 Van Reipen Ave., Jersey City, N.J.
Phone 963-9061.

The following name was obtained by Investigator Sam Jones during a visit to a local church, prior to returning to the Ghaly store office. The name was also given to Mr. Ghaly by Mr. Jones.

- (10) J. R. Doss, 627 Summit Ave., Apt. C, Jersey City, N.J.
Initially it was reported that Mr. Doss had 3 Fsikh fish in his freezer, but follow-up investigation failed to confirm this.

The following person called Mr. Ghaly at 7:15 P.M. 2/23/75 to state that she had purchased some Fsikh fish on 2/15 or 2/16/75 and that she and four or five family members had eaten the Fsikh on 2/16/75. Noone was known to have been made sick. No fish remained.

Mrs. Illin Gurgis, 53 Prospect St., Jersey City (Heights), N.J.
Phone 963-8587.

RECALL RELATED INFORMATION

In addition to previously described recall procedures employed, Mr. Adel Ghaly voluntarily placed the two page recall notice that we had provided, in his store and on the door of the store. He voluntarily had his employee write a message in

EXHIBIT B. IN SUPPORT OF MOTION

Arabic in the face of the notifications posted in his store. The arabic portion explained the recall and instructed everyone who had purchased and/or eaten the Fsikh to notify him at the store. He listed the store telephone number for communication purposes. Exhibit #9 is the recall notification as posted in the store.

Also, Mr. Ghaly and his assistant Mr. Magdi Mahfarz personally spoke to all customers who came into the store on 2/23/75 and promised to continue to do so for at least a week. They verbally informed them of the recall and dangers, and requested their names and addresses if they had purchased any Fsikh. Mr. Ghaly stated that they would telephone Newark District (Paul Wiener, or Edward Wilkens or Investigator Rosen) and furnish the additional names, if any were encountered.

STORE STOCK INSPECTION

All areas of the store were inspected in an attempt to locate additional stock of the Fsikh located. No remaining stock was located within the store or its storage areas.

COMPLAINT FILE REVIEW

Mr. Ghaly does not maintain a complaint file. He stated that he has never heard anyone complain of illness or injury caused by consumption of the Fsikh sold at his store.

PROMOTION AND DISTRIBUTION

All sales are done on a direct retail basis from this single location grocery store, A & G Company according to Mr. Adel Ghaly. He stated that he does not sell to anyone else for resale. He concluded by stating that, to the best of his knowledge all of his customers reside in the general area of Jersey City, but that there are customers that he does not know.

REFUSALS

None. Mrs. Wafa Ghaly and Mr. Adel Ghaly cooperated completely and furnished all information requested during this inspection. They voluntarily consented to all aspects of the inspectional operations.

EXHIBIT B, IN SUPPORT OF MOTION

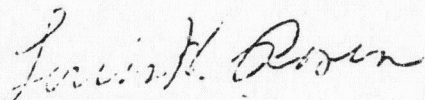
DISCUSSION WITH MANAGEMENT

There was no other discussion with management other than that which furnished information contained in this report.

EXHIBITS

The following exhibits accompany this report.

- 1 - 5 The five FD-482 Notices of Inspection
- 6 - Assignment memo
- 7 - Affidavit by Wafa Ghaly
- 8 - Affidavit by Adel Ghaly
- 9 - Recall Notification posted at A & G Company



LOUIS H. ROSEN
Investigator
Newark District

ANALYST WORK SHEET

3. SEALS <input type="checkbox"/> INTACT <input type="checkbox"/> BROKEN <input checked="" type="checkbox"/> NONE		4. DATE RECD 2-27-75	5. RECEIVED FROM LEONARD McSTRANDER	6. DISTRICT OR DIVISION N-K
7. DESCRIPTION OF SAMPLE The sample consisted of a plastic jug containing five whole fish immersed in liquid.				
8. NET CON- TENTS <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> NOT DETERMINED <input type="checkbox"/> UNITS EXAMINED	<input type="checkbox"/> DECLARED AMOUNT FOUND _____ % OF DECLARED _____		9. LABEL- ING <input type="checkbox"/> ORIGINAL(S) SUBMITTED <input type="checkbox"/> _____ COPIES SUBMITTED <input type="checkbox"/> NONE LABEL QUOTED BELOW	

10. SUMMARY OF ANALYSIS

CONTAINER: CYLINDER-SHAPED PLASTIC CONTAINER MEASURING 17" IN HEIGHT AND 8" IN DIAMETER WITH A PLASTIC SCREW CAP

LABEL: THE LABEL ON THE PLASTIC CONTAINER READS "KRINOS BRAND SELECTED GREEK GREEN CRACKED OLIVES IN BRINE... NET WT. 30 LBS... PRODUCT OF GREECE... IMPORTER AND DISTRIBUTED BY KRINOS FOODS INC... NEW YORK, N.Y. 10013... USA-MONTREAL TORONTO, CANADA... PORT SAID MARIO"

CODE: NONE

PRODUCT: WHOLE FISH IN LIQUID

ANALYSIS: CLOSTRIDIUM BOTULINUM PREFORMED TOXIN

METHOD: B. A. M. 3RD EDITION 1972 SECTION XI

UNITS TESTED: A PORTION OF EACH OF THE FISH WAS COMPOSITED AND TESTED.

RESULTS: PREFORMED CLOSTRIDIUM BOTULINUM TOXIN TYPE "E" WAS DETECTED IN THE SAMPLE COMPOSITE TESTED. TYPE "E" TOXIN WAS IDENTIFIED BY TOXIN NEUTRALIZATION TESTING.

11. RESERVE SAMPLE

ONE PLASTIC CONTAINER OFFICIALLY SEALED "058-953H, 2-28-75, JOHN P. SCHRADER" CONTAINING FISH IN LIQUID WAS RETURNED TO THE SAMPLE CUSTODIAN.

12. DATE REPORTED 3-4-75	13a. ANALYST(S) NAME John P. Schrader Leonard W. McStrander	13b. NUMBER 548 575	13c. PC 5 1	14. CALCULATIONS CHECKED	15. BY DATE
15. PROGRAM DATA		METHOD (Check no more than two)			
EXAMS 03 0003 BF3 26177 018		(A) <input type="checkbox"/> MACROSCOPIC (M) <input type="checkbox"/> MICROSCOPIC (X) <input type="checkbox"/> X-RAY (F) <input type="checkbox"/> FIELD EXAM (P) <input type="checkbox"/> PHY EXAM (U) <input checked="" type="checkbox"/> BACT (O) <input type="checkbox"/> ORGAN (C) <input type="checkbox"/> CHEM (N) <input type="checkbox"/> W/O ANAL (L) <input type="checkbox"/> BIO			

EXHIBIT B, IN SUPPORT OF MOTION

FISH

058-953 H

2-22-75 ANALYSIS INITIATED ACCORDING TO THE METHODOLOGY
CITED.

John P. Schrade
3-4-75

MEDIA QUALITY ASSURANCE

COOKED MEAT MEDIA - BBL 201527

TPGY MEDIA - 48

BOTULINUM ANTITOXIN TYPE A - DATE 7-8-71 LOT 2 CDC
TYPE B - DATE 9-28-64 LOT 3 CDC
TYPE E - DATE 10-14-63 LOT 1 CDC

GEL PHOSPHATE - 51

EXPOSURE PLATES NEGATIVE FOR GROWTH.

John P. Schrade
3-4-75

EXHIBIT B, IN SUPPORT OF MOTION

1. ANALYST WORKSHEET		2. Material Fish (Bass)		3. Case-753 H	
4. DATE REC'D	5. RECEIVED FROM	6. DISTRICT OR DIVISION			
2-25-75	N.Y. DO	DM			
7. DESCRIPTION OF PRODUCT					
Received by "Sprint Eastern Airline" at 12 noon, one cardboard box under ice containing 1 plastic bag with 2 m.b.t. fish plus a plastic bag containing approx. 600 ml of the brine.					
8. NET CONTENTS		9. LABELING		SUBMITTED:	
<input type="checkbox"/> NOT APPLICABLE DECLARED FOUND() % OF DECLARED		<input type="checkbox"/> NONE		<input type="checkbox"/> ORIG <input type="checkbox"/> NONE <input type="checkbox"/> COPIES	
10. SUMMARY OF ANALYSIS					
<p><u>Experimental:</u> 50g of fish meat were blended with 70 ml of the brine and centrifuged in the cold @ 7000 RPM for 40 minutes.</p> <p>A portion of the supernatant was used to inject mice, I.P., 0.5 ml into each of 2 mice per each dilution; mice unprotected and mice protected with monovalent <i>C. botulinum</i> antitoxin types A, B & E.</p> <p>A portion of the supernatant was trypanized at 1% final concentration and then injected into mice on the same schedule as above.</p> <p>Another portion of supernatant was boiled for 10 minutes and 0.5 ml undiluted material injected into each of 2 mice.</p> <p>Approx. 2 g of fish meat were inoculated into each of 3 tubes of Trypticase-Peptone-Glucose Yeast Extract (TPGY) broth and incubated at 26°C for 5 days.</p> <p><u>Results:</u> The supernatant killed mice at 10^4 dilution and was neutralized by <i>C. botulinum</i> type E antitoxin.</p> <p>Following 5 days incubation at 26°C the TPGY cultures killed mice at 10^4 dilution and were neutralized by <i>C. botulinum</i> type E antitoxin.</p>					
11. RESERVE SAMPLE		Refrigerator			
12. DATE REPORTED		13a. ANALYST(S) NAME		13b. NO.	
3/11/75		Donald R. Kautler			
		Harris M. Solomon			
13. PROGRAM DATA		13c. PC		14. CALCULATIONS CHECKED	
OPERATION 1 <input type="checkbox"/> F <input type="checkbox"/> H <input type="checkbox"/> O <input type="checkbox"/> T ACTIVITY 2 <input type="checkbox"/> F <input type="checkbox"/> H <input type="checkbox"/> O <input type="checkbox"/> T 3 <input type="checkbox"/> F <input type="checkbox"/> H <input type="checkbox"/> O <input type="checkbox"/> T		NO. 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78a

EXHIBIT B, IN SUPPORT OF MOTION

Continuation Sheet, Canned Foods Product Processed Fish (Cane) Sample No. 053-953/H

Culture Record

Date Cultured 2-25-75Preparation: Pieces of fish and/or 2ml brineInoculum size 2 gr Vol. of Medium 15 mlIncubation temperature 26°CDate Examined 3-4-75

Can and Sub No.	Growth in the following media.			Microscopic examination of cultures
	TFGY			
Fish	growth	growth		
Brine	growth	growth		

Analyst(s)

Analyst No.

Page 3 of 5 page

EXHIBIT B, IN SUPPORT OF MOTION

PRODUCT		TOXINOGEN (BOTTLE)										PAGE OF PAGES		1 1			
METHOD OF PREPARATION		5 DAY OLD TON BROTH CULTURES AT 26°C.															
		1. 3 ML ALIQUOTS FROM EACH OF TWO CULTURES WERE TIPSINIZED. 2. 0.5 ML OF A 10 ¹ , 10 ² , 10 ³ , 10 ⁴ , 10 ⁵ DILUTION OF EACH CULTURE WAS INJECTED INTO EACH OF TWO PROTECTED AND EACH OF TWO UNPROTECTED MICE. 3. MICE WERE PROTECTED WITH MONOVALENT TYPE E ANTISERUM.															
ANALYST(S)															DATE		
															3.5.75		
SUB NO.	TOXICITY SCREENING TEST	NEUTRALIZATION										SUMMARY					
		UNPROTECTED					PROTECTED										
1	TOXIN	10 ¹	10 ²	10 ³	10 ⁴	10 ⁵	TYPE E	10 ¹	10 ²	10 ³	10 ⁴	10 ⁵	TYPE E TOXIN				
		2	2	2	2	2		1	0	0	0	0					
2	TOXIN	10 ¹	10 ²	10 ³	10 ⁴	10 ⁵	TYPE E	10 ¹	10 ²	10 ³	10 ⁴	10 ⁵	TYPE E TOXIN				
		2	2	2	2	2		2	0	0	0	0					

* NUMBER OF DEAD MICE OUT OF 2 INOCULATED

EXHIBIT B, IN SUPPORT OF MOTION

PRODUCT <u>PROCESSED FISH (GORP)</u>		PAGE OF PAGES <u>004-0014</u>											
METHOD OF PREPARATION <u>5 DAY OLD TYPH BROTH CULTURES AT 20°C. BRINE</u>													
<p>1- 0.1 ML ALIQUOTS FROM EACH OF TWO CULTURES WERE TRIPS. SIZED.</p> <p>2- 0.05 ML OF A $10^0, 10^1, 10^2, 10^3, 10^4, 10^5$ DILUTION OF EACH CULTURE WAS INJECTED I.P. INTO EACH OF TWO PROTECTED AND EACH OF TWO UNPROTECTED MICE.</p> <p>3- MICE WERE PROTECTED WITH MONOVALENT <u>TYPE E</u> ANTISERUM.</p>													
ANALYST(S)			DATE <u>5-11-75</u>										
SUB NO.	TOXICITY SCREENING TEST	NEUTRALIZATION										SUMMARY	
		UNPROTECTED					PROTECTED						
<u>TRIP</u>	<u>TRIPS</u>	<u>10</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>TYPE E</u>	<u>10</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>Type E toxin</u>
<u>#1</u>		<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
<u>TRIP</u>	<u>TRIPS</u>	<u>10</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>TYPE E</u>	<u>10</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>Type E toxin</u>
<u>#2</u>		<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>		<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	

* NUMBER OF DEAD MICE OUT OF 2 INOCULATED

EXHIBIT B, IN SUPPORT OF MOTION

ANALYST WORK SHEET		FISH		INNOV-153H	
2. SEALS <input type="checkbox"/> INTACT <input checked="" type="checkbox"/> BROKEN <input checked="" type="checkbox"/> NONE		3. DATE RECD 3-4-75		5. RECEIVED FROM LEONARD MESTRANDEA	
6. DISTRICT OR DIVISION NYK					
7. DESCRIPTION OF SAMPLE TWO TUBES OF COOKED MEAT MEDIA AND TWO TUBES OF TPGYT MEDIA INOCULATED WITH A PORTION OF THE FISH WERE SUBJECTED TO ANALYSIS FOR THE RECOVERY OF CULTURAL BOTULINUM TOXIN AND THE C. BOTULINUM ORGANISM.					
8. NET CON- TENTS <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> NOT DETERMINED <input type="checkbox"/> UNITS EXAMINED		9. DECLARED AMOUNT FOUND % OF DECLARED		10. LABEL- ING <input type="checkbox"/> ORIGINAL(S) SUBMITTED <input type="checkbox"/> COPIES SUBMITTED <input checked="" type="checkbox"/> NONE* SEE ORIGINAL ANALYSIS	
11. SUMMARY OF ANALYSIS					
CONTAINER LABEL CODE PRODUCT		TWO TUBES OF COOKED MEAT MEDIA & TWO TUBES OF TPGYT MEDIA - EACH OF THE FOUR TUBES INOCULATED WITH A PORTION OF THE FISH PRODUCT - WERE SUBJECTED TO ADDITIONAL ANALYSIS.			
ANALYSIS: CLOSTRIDIUM BOTULINUM CULTURAL TOXIN AND C. BOTULINUM MICROORGANISM					
METHOD: B.A.M. 3 RD EDITION 1972 SECTION XI					
UNITS TESTED: TWO TUBES EACH OF COOKED MEAT & TPGYT MEDIA					
RESULTS: CLOSTRIDIUM BOTULINUM TOXIN TYPE "E" WAS DETECTED IN BOTH THE COOKED MEAT AND TPGYT CULTURE MEDIA. TYPE "E" TOXIN WAS IDENTIFIED BY TOXIN NEUTRALIZATION TESTING. THE RECOVERY OF THE C. BOTULINUM MICROORGANISM FROM THE CULTURE MEDIA WAS NOT POSSIBLE DUE TO THE PROBABLE DEATH OF THE ORGANISM.					
12. RESERVE SAMPLE NO RESERVE					
13. DATE REPORTED 3-13-75		13a. ANALYST(S) NAME John P. Schwab		13b. NUMBER 598 15	
				14. CALCULATIONS CHECKED	
				15. BY DATE	
15. PROGRAM DATA					
OPERATION 2		NO. LATE		METHOD (Check no more than two)	
EXAMS		NO. LATE		(A) <input type="checkbox"/> MACROSCOPIC (M) <input type="checkbox"/> MICROSCOPIC	
1. 013 000 02		13F3201177		(X) <input type="checkbox"/> X-RAY (F) <input type="checkbox"/> FIELD EXAM	
2.		056		(P) <input type="checkbox"/> PHY EXAM (B) <input checked="" type="checkbox"/> BACT (O) <input type="checkbox"/> ORGAN	
3.		056		(C) <input type="checkbox"/> CHEM (N) <input type="checkbox"/> W/O ANAL (L) <input type="checkbox"/> BIO	

EXHIBIT B, IN SUPPORT OF MOTION

FISH

INV 058-453 H

3-4-75

ANALYSIS INITIATED FOR TOXIN DETECTION AND
RECOVERY OF MICROORGANISM.NO TYPICAL COLONIES FOR C. BOTULINUM ORGANISM
WERE DETECTED ON ANAEROBIC EGG AGAR STREAKED
FROM THE COOKED MEAT & TPGYT CULTURE MEDIA.John P. Schrade
3-13-75MEDIA QUALITY ASSURANCE

COOKED MEAT - BBL 201527

TPGYT - 48

BOTULINUM ANTITOXIN TYPE E - DATE 10-14-63 LOT 1 CDC

GEL PHOSPHATE - 51

ANAEROBIC EGG AGAR - 48

EXHIBIT B, IN SUPPORT OF MOTION

ADDITIONAL ANALYSIS

SUBJECT

FISH

PAGE 2 OF 2 PAGES

SAMPLE NUMBER

INV 058-753H

METHOD OF PREPARATION

THE COOKED MEAT MEDIA WAS INCUBATED FOR 5 DAYS AT 35°C AND THE TPGYT MEDIA FOR 5 DAYS AT 25°C. A PORTION OF EACH OF THE CULTURES WAS WITHDRAWN AND CENTRIFUGED AT 20,000 RPM'S FOR 30 MINUTES. THE SUPERNATE WAS DRAWN OFF AND FILTERED, THE PH 6.5. DILUTIONS WERE PREPARED USING GEL PHOSPHATE AND MICE INOCULATED.

ANALYST(S)

JOHN P. SCHRADE

DATE

SUB NO.	TOXICITY SCREENING TEST	NEUTRALIZATION												SUMMARY
		UNPROTECTED				PROTECTED								
C.M.	15 0 0 0 0													TOXIN INDICATED
EXTRACT	2 2 2 0													
TPGHT														TOXIN INDICATED
EXTRACT	2 2 2 0													
		TOXIN IDENTIFICATION												
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EXHIBIT C, IN SUPPORT OF MOTION--AFFIDAVIT OF MOHAMED ALI.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

MOHAMED ALI and NADIA ALI,

Plaintiffs,

-against-

A & G COMPANY INC. and
SAADI IBRAHIM,

Defendants.

AFFIDAVIT

75 Civil 1168

-----x

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

SS.:

MOHAMED ALI, being duly sworn, deposes and says:

I am one of the plaintiffs in the above entitled action and am fully familiar with the facts and circumstances herein.

I make this affidavit in support of my motion to vacate this Court's order of January 13, 1976.

I reside with my wife, Nadia Ali, at 141-09 84th Drive, Jamaica, New York. I am an American citizen and my wife is an Egyptian citizen and we both lawfully reside in the United States.

On or about February 13th or 14th, 1975, my wife asked

EXHIBIT C, IN SUPPORT OF MOTION

a friend to purchase some fish at the store of the defendant, A & G COMPANY INC. in Jersey City, New Jersey. The fish was purchased that day and brought directly to my house where my wife placed it in to a jar of vegetable oil and refrigerated it.

On Saturday evening, February 15th, 1975, I ate the fish for dinner. When I awoke on Sunday, February 16th, 1975 I started to feel pain and discomfort in my stomach. When I got up on Monday, February 17, 1975, I was having great difficulty breathing and was taken to Queens Hospital Center where I was admitted for botulism type E poisoning. This strain, I have been informed, comes from eating tainted fish.

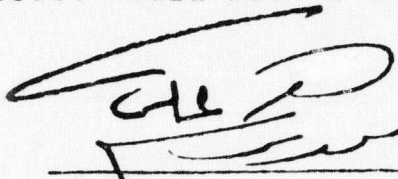
I was discharged almost a month later on March 15, 1975. In addition to being caused substantial medical bills (\$3,400.00), I have been caused to suffer the loss of salary in the amount of \$2,400.00 and my business, The Amal Parking Corporation, has lost grievously by having to hire a replacement for me.

I have examined the reports of the U. S. Food and Drug Administration, which were prepared as a result of my illness, in which they state that they found the fish to be tainted with botulism E strain.

I verily believe that I have a just and proper cause of action against the defendants herein.

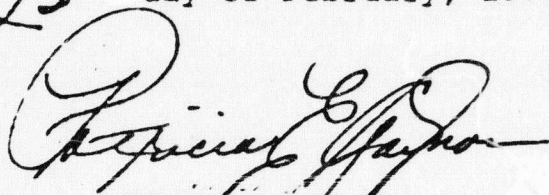
EXHIBIT C, IN SUPPORT OF MOTION

To deny me my day in Court would work a substantial
injustice against me.


MOHAMED ALI (His Mark)

Sworn to before me this

25 day of February, 1976



Notary Public, State of New York
No. 47-4808536
Qualified in Queens County
Commission Expires March 30, 1977

PATRICIA E. GARRISON
Notary

ANSWERING AFFIRMATION OF NORMAN C. HARLOWE IN OPPOSITION
TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MOHAMED ALI and NADIA ALI,

Plaintiffs,

- against -

A & G COMPANY INC. and SAADI IBRAHIM,

Defendants.

Index No.
75 Civil 1168
L. M. M.

ANSWERING AFFIRM-
ATION

-----X
STATE OF NEW YORK
COUNTY OF NEW YORK

)
) SS:

NORMAN C. HARLOWE, an attorney of the State of New York duly licensed to practice law in the Courts of this State affirms the truth of the following statements under the penalties of perjury.

He is the attorney for the defendant SAADI IBRAHIM and makes this affirmation in opposition to the Motion for an Order vacating the dismissal of the subject matter.

The defendant SAADI IBRAHIM was never served with Interrogatories and never refused to answer same.

The defendant through your affirmant appeared at all conferences set by the Court herein, except for the conference of January 14, 1976 and other trial dates prior thereto. Your affirmant was advised by Mr. Kaplan of the Office of Harry Lipsig, Esq. that he would cover for him on January 14, 1976.

Your affirmant believes that the dismissal herein by the Honorable Court/^{was} within the courts province and that there is

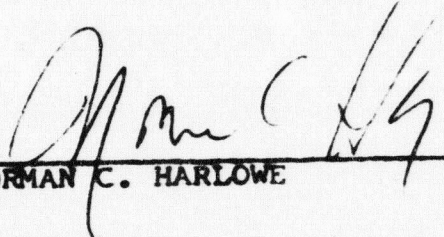
ANSWERING AFFIRMATION OF NORMAN C. HARLOWE IN OPPOSITION
TO MOTION

justification in law or fact for setting aside the decision of this court.

On information and belief, it is respectfully submitted that the pending appeal in this matter divest the court before which this motion is returnable of jurisdiction thereof.

WHEREFORE, it is respectfully requested that the relief sought by the plaintiff be denied.

Dated: New York, N.Y.
March 8, 1976



NORMAN C. HARLOWE

AFFIRMATION OF PATRICK J. MOYNIHAN IN OPPOSITION TO MOTION.
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----x

MOHAMED ALY and NADIA ALI,

Plaintiffs,

-against-

A & G COMPANY, INC. and SAADI
 IBRAHIM,

Defendants.

-----x

AFFIRMATION

75 Civ. 1168
 (L. M. M.)

PATRICK J. MOYNIHAN, an attorney duly admitted to practice in the Courts of the State of New York, and an associate in the firm of LEAHEY & JOHNSON, ESQS., attorney for the defendant A & G COMPANY, INC., herein, makes the following statements under penalty of perjury, said statements being based upon information and belief and on papers contained in the file maintained by the defendants A & G COMPANY, INC., aforesaid attorneys:

1. On or about October 21, 1975, I appeared in Federal District Court, Southern District of New York, pursuant to a pretrial order, for a pretrial conference before Judge Lloyd MacMahon.

2. During the course of the conference, I pointed out to Judge MacMahon that counsel for the plaintiff had either refused or neglected to answer many of the interrogatories previously forwarded to

AFFIRMATION OF PATRICK J. MOYNIHAN IN OPPOSITION TO MOTION

him and, in addition, had not furnished my office with either the plaintiff's medical bills and records or written authorization which would enable my office to obtain them. In addition, I advised the Court that we were unable to discuss any possible settlement in this matter until we had received the requested information.

3. Judge MacMahon then asked the undersigned to indicate the unanswered interrogatories and the disputed answers and, thereafter, directed counsel for the plaintiff to answer forthwith each and every interrogatory, with the exception of one, which he had hitherto either refused or failed to answer and also directed counsel for the plaintiff to furnish the defendant with either the plaintiff's medical records or an authorization for their release.

4. In addition, the Court fined Alex Kaplan, Esq., counsel for the plaintiff, the sum of \$50.00 because of his prior lack of cooperation, which had severely hampered the defendant in his preparation for trial. The Court further advised counsel for the plaintiff that he should cooperate with the Court and with counsel for the co-defendants in the future and that he should be prepared for trial in this matter in early January of 1976 or risk having his cause of action dismissed.

5. The Court also advised that this matter would be added on the ready calendar on January 9, 1976, and that the attorneys for the

AFFIRMATION OF PATRICK J. MOYNIHAN IN OPPOSITION TO MOTION
plaintiff and the co-defendants would have to proceed to trial thereafter
upon receipt of a short telephonic ~~notice~~ indicating that the matter had
been reached for trial.

Dated: New York, New York
March 5, 1976

PATRICK J. MOYNIHAN

AFFIDAVIT OF BRYAN P. KUJAWSKI IN OPPOSITION TO MOTION.
 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----x
 MOHAMED ALI and NADIA ALI,

Plaintiff

AFFIDAVIT

-against-

75 Civil 1168

A & G COMPANY, INC. and
 SAADI IBRAHIM,

Defendants.
 -----x

STATE OF NEW YORK)

:

SS.:

COUNTY OF NEW YORK)

BRYAN P. KUJAWSKI, being duly sworn, deposes and says: The undersigned, an attorney duly admitted to practice in the Courts of the State of New York, and an associate of the firm of LEAHEY & JOHNSON, attorneys for the defendant A & G COMPANY herein, makes the following statements, upon information and belief, under penalties of perjury; said statements being based on papers contained in the file maintained by defendant's aforesaid attorneys.

On January 9, 1976, your affirmant appeared ^{before} ~~for~~ Honorable Justice Lloyd MacMahon for the scheduled conference.

Plaintiff made application for an adjournment to complete trial preparation. Co-defendants, SAADI's attorney, likewise requested the Court's relief and guidance due to Mr. SAADI's peculiar situation.

AFFIDAVIT OF BRYAN P. KUJAWSKI IN OPPOSITION TO MOTION

At no point did plaintiff raise any questions concerning defendant's interrogatories.

Your affirmant stated that plaintiff had failed to comply with the Court's directive concerning medical reports and defendant A & G Company had thus been prevented from conducting oral depositions. Justice MacMahon stated that the date for completing pretrial matters was past and all parties were told to be prepared on telephone notice for trial without delay or excuse.

No mention was made by plaintiff's counsel that plaintiff's trial attorney was engaged on January 9, 1976, nor that he would be unavailable due to expected engagement in Supreme Court New York on January 13, 1976.

It was suggested to plaintiff's counsel by your affirmant that oral deposition be completed immediately provided medical reports be made available. Plaintiff's counsel neither agreed nor disagreed, but stated he would contact your affirmant. No further arrangements for the oral depositions were followed through by plaintiff's counsel.

BRYAN P. KUJAWSKI

Sworn to before me this

5th day of March, 1976

NOTARIAL PUBLIC
STATE OF NEW YORK
COUNTY OF []
[]
[]

AFFIDAVIT OF FRANCIS J. SHEERIN IN OPPOSITION TO MOTION.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

MOHAMED ALI and NADIA ALI,

Plaintiff

AFFIDAVIT

-against-

75 Civil 1168

A & G COMPANY, INC. and
SAADI IBRAHIM,

Defendants.

-----X

STATE OF NEW YORK)

:

SS.:

COUNTY OF NEW YORK)

FRANCIS J. SHEERIN, being duly sworn, deposes and says he is an attorney associated with the firm of LEAHEY & JOHNSON, the attorneys for the defendant A & G COMPANY in the above-captioned action and, as such is familiar with the facts and circumstances herein.

This is an affidavit in opposition to a motion by the plaintiff to vacate the Court's Order of January 13, 1976 dismissing the above-captioned action for failure to prosecute.

On January 13, 1976, your deponent appeared in the United States District Court for the Southern District of New York ready for the trial of the above-captioned action. At that time the attorneys for the plaintiff requested to see Judge MacMahon in his robing room to request an

AFFIDAVIT OF FRANCIS J. SHEERIN IN OPPOSITION TO MOTION

adjournment of the trial, indicating that they were unable to get in touch with the named plaintiff, and further indicating the attorney assigned to try this case was engaged in a trial in New York County Supreme Court. The judge then questioned the attorney for the plaintiff as to the prior notices that this matter was on the ready trial calendar. Judge MacMahon denied the motion for the adjournment and inquired as to whether the attorneys for the plaintiff were ready to proceed. The representative of Mr. ALI then indicated that the attorney for the defendant SAADI IBRAHIM, Mr. NORMAN C. HARLOWE, was not present either. Some discussion then took place as to whether a default judgment could be taken against the defendant IBRAHIM. The Court asked the attorney for the plaintiff whether he wished to move to dismiss his own action, whereupon the attorney for the plaintiff, Mr. ALAN TELEWOGGER, asked the Court, would he be in any more favorable position to put the matter back on the calendar should he make the motion. Judge MacMahon then very definitely indicated that the matter was being dismissed with prejudice, whereupon Mr. TELEWOGGER indicated that he did not wish to make such a motion. The Court dismissed the case of ALI with prejudice. Discussion concerning the dismissal of the Cross-Complaints between IBRAHIM and A & G COMPANY were resolved with the dismissal of the plaintiff ALI's case, whereby the Cross-Complaints for contribution would fall of their own weight.

AFFIDAVIT OF FRANCIS J. SHEERIN IN OPPOSITION TO MOTION

WHEREFORE, it is most respectfully requested that this Court deny the plaintiff's motion to vacate its January 13, 1976 Order dismissing this action for failure to prosecute and also deny the plaintiff's prayer to stricken the defendant's answer and the plaintiff's request to restore this matter to the trial calendar for inquest and for any other and further relief as to Court may seem just and proper.

FRANCIS J. SHEERIN

Sworn to before me this
5th day of March, 1976

MEMORANDUM BY LLOYD F. MacMAHON, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

MOHAMED ALI and NADIA ALI,	:	
	:	75 Civ. 1168-LFM
Plaintiffs,	:	
-against	:	<u>MEMORANDUM</u>
A & G COMPANY INC. and	:	
SAADI IBRAHIM,	:	
Defendants.	:	

-----x

APPEARANCES:

Harry H. Lipsig, P.C.
Attorney for Plaintiffs
(Joseph P. Napoli, Esq. and
Pamela Anagnos Liapakis,
of counsel)
100 Church Street
New York, N.Y. 10007

Norman C. Harlowe, Esq.
Attorney for Defendant Ibrehim
401 Broadway
New York, N.Y. 10013

MacMAHON, District Judge.

This is a motion by plaintiffs to vacate an order, made January 13, 1976, dismissing this action for failure to prosecute and for failure to comply with a stipulated pre-trial order. We deny the motion.

MEMORANDUM BY LLOYD F. MacMAHON, U.S.D.J.

Familiarity with the background facts forming the basis for dismissal is essential to understanding our determination.

A pretrial conference was held on October 17, 1975, at which we reviewed the status of the case, ruled on outstanding disputes regarding discovery, discussed settlement, and scheduled completion of discovery and trial. The attorneys then stipulated to Pre-Trial Order No. 2¹ which unequivocally provided that the parties complete discovery by December 17, 1975 and that the action be added to our ready trial calendar on January 9, 1976, to be tried when reached in order, on short telephonic notice, after publication on our trial calendar in the New York Law Journal. In accordance with that order, counsel were duly alerted by telephone, notified by letter, and informed by daily publication in the New York Law Journal² commencing January 9, 1976 that this action had been added as No. 4 on our ready trial calendar to be tried substantially in the order listed when called upon short telephonic notice.³

There can be no question that plaintiffs' counsel received due notice of the imminence of trial, for

MEMORANDUM BY LLOYD F. MacMAHON, U.S.D.J.

he appeared before us on Friday, January 9, 1976, and sought an adjournment claiming that he was unable to communicate with plaintiffs despite several attempts during the past three days to reach them by telephone.⁴ Why he waited from October 17 until three days before the zero hour, January 9, to attempt to advise plaintiffs that the action had been added to the trial calendar was not and is not now explained.

Nor did plaintiffs' counsel seek an adjournment of the trial date at any time during the preceding four months, although he knew the case would be reached for trial on or after January 9. Rather, Harry H. Lipsig, P.C. waited until after the case had been added to our trial calendar. Adjournment of a trial at that late hour usually results in the loss of available trial days, and trial days, after all, are the prime resource of a trial court. Unnecessary gaps in trial calendars are a luxury which the public cannot tolerate and which this congested court cannot afford. It has, therefore, long been the practice of this court not to grant adjournments once an action has been placed on the trial calendar, except upon a showing of some urgent, compelling and intervening circumstance, beyond the control of the

MEMORANDUM BY LLOYD F. MacMAHON, U.S.D.J.

parties, occurring after the case has been placed on the trial calendar. No such fact or circumstance was shown here and, indeed, even now, there is no such showing.

On Tuesday, January 13, 1976, plaintiffs' counsel again applied for an adjournment which the court denied. The case was reached for trial on Wednesday, January 14, 1976; the defendants were ready to proceed, but, although plaintiffs' counsel appeared, he refused to proceed, still insisting on an adjournment and protesting that he was unable to reach his clients.

The assertion by plaintiffs' counsel, in his moving affidavit, that he had only twenty minutes' notice of trial distorts the fact that he knew of the probable trial date for at least four months and had been repeatedly alerted over a period of six days to be ready to proceed to trial on further short telephonic notice.

Plaintiffs and their counsel would have us close our doors until it pleased them to go to trial. Patently, this court cannot function on any such basis. Nor can we tolerate counsel's taking on a conflicting engagement without leave and without a substitute when

MEMORANDUM BY LLOYD F. MacMAHON, U.S.D.J.

he knew full well that the case was on a very short trial calendar.⁵

The moving affidavit is long on baseless, unwarranted and argumentative criticism of this court but remarkably short on facts warranting a finding of justifiable excuse for plaintiffs' failure to be ready for trial in accordance with the pre-trial order and this court's refusal, three times over a six-day period, to grant an adjournment.

The principal plaintiff, Mohamed Ali, submits an affidavit purporting to show that he has a meritorious claim for relief for botulism contracted from eating poisonous Fsikh, an Egyptian food sold by one of the defendants and prepared by the other. Ali, however, does not even attempt to state or show any reason whatever, much less a justifiable excuse, for his or his counsel's inability to communicate and his consequent failure to appear for trial. There is absolutely no showing that plaintiffs were unabailable for trial for any reason beyond the control of themselves or their counsel.

We are aware that whatever the cause dismissal may seem harsh to some unfamiliar with the pressing need

MEMORANDUM BY LLOYD F. MacMAHON, U.S.D.J.

to keep current with our trial calendars in this congested court, lest we delay the administration of justice and accumulate an enormous and totally unmanageable backlog, as was the case in the later years of the master calendar. Plaintiffs' failure to prosecute and proceed to trial in accordance with the pre-trial order was wholly inexcusable on the facts shown here. Dismissal was due solely to the fault of plaintiffs or their counsel, and they, not the defendants, nor other waiting litigants, nor the public, should suffer the consequences.

If counsel knew, as he should before the last minute, that plaintiffs would be unavailable for trial, he could have moved timely for an adjournment or, so directed, perpetuated the testimony of plaintiffs if they were likely to be unavailable when the case was reached for trial. Thus, these plaintiffs and their counsel were given every opportunity to have their day in court. We can do no more.

In fairness to hundreds of other deserving litigants eagerly waiting in a long line for their day in court, we must terminate cases, by trial or otherwise, once they are reached for trial. When the parties,

MEMORANDUM BY LLOYD F. MacMAHON, U.S.D.J.

without good cause, fail to proceed to trial when reached, in flagrant disregard of a pre-trial order made months before with the full concurrence of their counsel, there is no feasible alternative to dismissal or default, otherwise we simply spin our wheels accomplishing nothing by taking cases off the top of our trial calendars and placing them down on the list to interfere then and later with other litigants' right to trial. It is time that counsel and litigants were taught that we mean business, that they must pay serious heed to pre-trial orders, particularly trial schedules, and that they cannot manipulate our trial calendars to suit themselves.

Accordingly, the within motion is in all respects denied.

So ordered.

DATED: New York, N. Y.

March 30, 1976

LLOYD F. MacMAHON
United States District Judge

MEMORANDUM BY LLOYD F. MacMAHON, U.S.D.J.

Mohamed Ali v. A & G Company Inc.

75 Civ. 1168-LFM

FOOTNOTES

1

See Appendix "A" attached.

2

See New York Law Journal, January 9, 1976, under "Judge MacMahon."

3

Short telephonic notice is a courtesy extended to counsel, for they have already been alerted to stand by ready to proceed to trial when reached. The alternative to this practice of short telephonic notice is to require attorneys, parties and witnesses to wait in the courtroom, as is often the practice in the State Supreme Court. If all trials were set for a day or days certain, about 90% of our available trial days would be wasted due to last minute pleas of guilty in criminal cases and settlements of civil cases on the morning of trial. Counsel are advised of this at the first pre-trial conference and instructed not to wait until the day of trial to plead or settle. Nevertheless, the instruction is usually ignored, resulting in the need to proceed with the next case or lose trial time.

4

There was no claim then that plaintiffs' counsel had taken on a conflicting engagement, as he now asserts.

5

Plaintiffs' counsel, Harry H. Lipsig, P.C., is a professional corporation engaged in negligence practice and employs a large staff of trial attorneys. The administration of justice should not be frustrated because a corporate attorney takes on more business than it can handle.

APPENDIX A, TO MEMORANDUM.

MOHAMED ALI otano.

Plaintiff(s),

-against-

A & G CO. INC. otano.

Defendant(s).

PRE-TRIAL ORDER NO. 2

75 Civ. 1168 (LTC)

*Products liability
beef fish*

The parties to this action, by their attorneys, having appeared before this court at a pre-trial conference on 10-17-75, 1975, pursuant to Rule 16 of the Federal Rules of Civil Procedure, it is hereby stipulated and ordered that:

(1) The parties shall complete all discovery and inspection by December 17, 1975.

(2) The parties shall, in order to prevent delay or interruption of the trial or other delay or failure of justice, have sufficient witnesses available in the courtroom at all times during the trial, and shall prearrange by deposition the testimony, on direct and cross-examination, of any essential witness, including physicians and other experts.

(3) The parties shall submit trial briefs, a statement of facts not disputed and of facts disputed, and, if a jury trial, requests to charge on or before January 9, 1976.

(4) The parties shall, in advance of trial, mark for identification all exhibits which they intend to use upon the trial, with the plaintiff(s) using numbers and the defendant(s) using letters.

(5) This action shall be added to the ready trial calendar on or after Jan 9, 1976, 1976, and thereafter, following publication on this court's trial calendar in the New York Law Journal, shall be ready for trial on short telephonic notice.

APPENDIX A, TO MEMORANDUM

(6)

shall move by

, 197 for an order

shall set aside an order within ten (10) days in accordance with this court's rulings on motion for

This action is referred to
for

(7) It shall be the responsibility of the parties and their attorneys now of record to bring this order to the attention of trial counsel and any other attorney who is now, or may hereafter be, involved in this litigation.

(8) Failure to comply with any of the provisions of this order may result in the court's taking appropriate steps to terminate the action.

Dated: October 17, 1976

[Signature]
Attorney(s) for Plaintiff(s)

[Signature]
Attorney for Defendant

[Signature]
Attorney(s) for Defendant(s)

SO ORDERED:

[Signature]

LOYD F. FROSTEN
United States District Judge

NOTICE OF APPEAL, DATED APRIL 15, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
MOHAMED ALI and NADIA ALI,

Plaintiffs-Appellants,

NOTICE OF APPEAL

-against-

A & G COMPANY INC. and
SAADI IBRAHIM,

75 Civil 1168

Defendants-Respondents. .
-----x

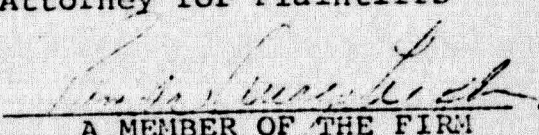
PLEASE TAKE NOTICE that plaintiffs MOHAMED ALI and NADIA ALI hereby appeal to the United States Court of Appeals for the Second Circuit, from the order of the HON. LLOYD F. MAC MAHON dated March 30th, 1976 denying plaintiffs' motion to vacate an order of dismissal.

Plaintiffs MOHAMED ALI and NADIA ALI appeal from each and every part of the order and the whole thereof.

DATED: NEW YORK, NEW YORK
April 15th, 1976

HARRY H. LIPSIG, P.C.
Attorney for Plaintiffs

BY


A MEMBER OF THE FIRM

TO: LEAHEY & JOHNSON, ESQS.
Attorneys for Defendant
120 Wall Street, New York, New York

CLERK, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
FOLEY SQUARE, NEW YORK, NEW YORK

NORMAN C. HARLOWE, ESQ.
401 Broadway, New York, NY 10013

United States Court of Appeals
For the Second Circuit

Mohamed Ali and Nadia Ali

Plaintiffs-Appellants

against

A & G Company Inc., and Saadi Ibrahim

Defendants-Appellants

On Appeal from the United States District Court
for the Southern District of New York

AFFIDAVIT
OF SERVICE

STATE OF NEW YORK,

COUNTY OF NEW YORK, ss:

Raymond J. BrD_aalike, agent for Harry H. Lipsig P.C.

being duly sworn,

deposes and says that he is over the age of 21 years and resides at
Levittown, New York

That on the 10th. day of May, 1976

he served the annexed Appendix

upon

1. Leahy & Johnson Esqs.
Attorneys for Defendants-Appellee
A & G. Company Inc.,
120 Wall Street
New York, New York
2. Norman C. Harlowe Esq.
Attorney for Defendant-Appellee
Saadi Ibrahim
401 Broadway
New York, New York

in this action, by delivering to and leaving with said attorneys

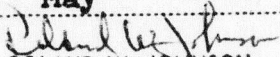
two ~~XIX~~ true copies to each thereof.

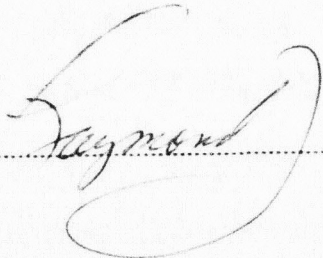
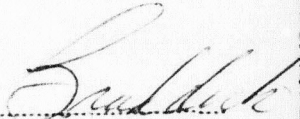
DEPONENT FURTHER SAYS, that he knew the persons so served as aforesaid to be the persons mentioned and described in the said action.

Deponent is not a party to the action.

Sworn to before me, this 10th.

day of May, 1976


ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1977

}  

Services of ^{Two (2)}~~the~~ (3) copies of
the within is
hereby admitted this day
of , 197

Attorney for

Services of ^{Two (2)}~~the~~ (2) copies of
the within is
hereby admitted this day
of , 197

Attorney for